

**UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION**

In Re: Highland Capital Management, L.P. § Case No. **19-34054-SGJ-11**

Hunter Mountain Investment Trust

Appellant §

vs. §

Highland Capital Management, L.P, et al § **3:23-CV-2071-E**

Appellee §

**[3904] Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders"
Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary
Proceeding. Entered on 8/25/2023.**

Volume 28

APPELLANT RECORD

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.

Reorganized Debtor.

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Chapter 11

Case No. 19-34054-sgj11

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**APPELLANT HUNTER MOUNTAIN INVESTMENT TRUST'S
SECOND SUPPLEMENTAL STATEMENT OF THE ISSUES AND
DESIGNATION OF ITEMS FOR INCLUSION IN THE APPELLATE RECORD**

COMES NOW Appellant/Movant Hunter Mountain Investment Trust, both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P., and the Highland Claimant Trust,¹ (collectively, "Appellant" or "HMIT"), and files this Second Supplemental² Statement of the Issues and Designation of Items for Inclusion in the Appellate Record pursuant to Federal Rule of Bankruptcy Procedure 8009(a)(1):

**I.
STATEMENT OF THE ISSUES**

- A. Did the bankruptcy court err in determining that the "colorable" claim analysis allowed the court to consider evidence and other non-pleading materials including, but not limited to, the court's reasoning that:
1. the colorability analysis is stricter than a non-evidentiary, Rule 12(b)(6)-type analysis;
 2. the colorability analysis is "akin to the standards applied under the ... *Barton* doctrine";
 3. the colorability analysis requires a "hybrid" of the *Barton* doctrine and "what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place"; and/or,

¹ And in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), the supplement to the Emergency Motion [Dkt. No. 3760], and the draft Complaint attached to the same [Dkt. No. 3760-1].

² Appellant files this Second Supplement pursuant to the Clerk's request at Docket #3949 and correspondence on 10/23/2023.

4. “[t]here may be mixed questions of fact and law implicated by the Motion for Leave”?

[See Dkt. Nos. 3781, 3790, 3903-04].

- B. Did the bankruptcy court err in determining that Appellant lacked constitutional or prudential standing to bring its claims in its individual and derivative capacities?

[See Dkt. Nos. 3903-04].

- C. Did the bankruptcy court err in alternatively determining that, even under a non-evidentiary, Rule 12(b)(6)-type analysis, Appellant did not assert colorable claims including, but not limited to, determining that:

1. Appellant’s allegations are conclusory, speculative, or constitute “legal conclusions”;
2. Appellant’s claims or allegations are not “plausible”;
3. Appellant’s allegations pertaining to a *quid pro quo* are “pure speculation”;
4. Proposed Defendant James P. Seery (“Seery”) owed no duty to Appellant in any capacity as a matter of law;
5. Appellant failed “to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty”;
6. Appellant’s allegations pertaining to its aiding and abetting and conspiracy claims are speculative and not plausible;
7. The remedies of equitable disallowance and equitable subordination are not remedies “available” to Appellant as a matter of law;
8. Appellant’s unjust enrichment claim is invalid as a matter of law because “Seery’s compensation is governed by express agreements”;
9. Appellant is not entitled to declaratory relief because it has no colorable claims; and/or
10. Appellant cannot recover punitive damages for its breach of fiduciary duty claim?

[See Dkt. Nos. 3903-04].

- D. Alternatively, even if the bankruptcy court correctly determined that its “hybrid” *Barton* analysis controls, did the court violate Appellant’s due process rights by denying Appellant its requested discovery?

[See Dkt. Nos. 3800, 3853, 3903-04, June 8, 2023 Hearing].

- E. Alternatively, did the bankruptcy court err by denying Appellant’s requested discovery including, but not limited to:

1. ordering that Appellant could not request or obtain any discovery other than a deposition of Seery and James D. Dondero; and/or
2. determining that state court “Rule 202” proceedings supported the denial of discovery?

[See Dkt. Nos. 3800 & June 8, 2023 Hearing; *see also* Dkt. Nos. 3903-04].

- F. Alternatively, did the bankruptcy court err by denying Appellant’s alternative request for a continuance to obtain the requested discovery?

- G. Alternatively, did the bankruptcy court err by excluding Appellant’s evidence, or admitting the same for only limited purposes, offered at the June 8, 2023 Hearing?

- H. Alternatively, did the bankruptcy court err by overruling Appellant’s objections to Appellees’ evidence offered at the June 8, 2023 Hearing?

- I. Alternatively, did the bankruptcy court err by excluding Appellant’s experts’ testimony?

[See Dkt. No. 3853; *see also* Dkt. Nos. 3903-04].

- J. Alternatively, did the bankruptcy court err by striking Appellant’s proffer of its excluded experts’ testimony from the record?

[See Dkt. No. 3869].

- K. Alternatively, if the bankruptcy court correctly determined that its “hybrid” *Barton* analysis controls, did the bankruptcy court err in determining that Appellant had not asserted colorable claims under that “hybrid” analysis including, but not limited to, its findings that:

1. there is no evidence to support that Seery shared material non-public information with the Claims Purchasers;
2. there is no evidence to support the alleged quid pro quo;
3. the material shared was *public* information; and/or
4. the Claims Purchasers had sufficient and lawful reasons to pay the amounts paid

for the purchased claims.

[See Dkt. Nos. 3903-04].

- L. Did the bankruptcy court err in finding that Appellant is controlled by Dondero, and, as such, Appellant “cannot show that it is pursuing the Proposed Claims for a proper purpose”?
- M. Alternatively, does sufficient evidence support the bankruptcy court’s evidentiary findings made pursuant to its “hybrid” *Barton* analysis?
- N. Did the bankruptcy court err in denying an expedited hearing on Appellant’s Motion for Leave? [See Dkt. 3713].
- O. Does the bankruptcy court’s use of a new “colorability” standard to determine if claims by non-debtors against other non-debtors may proceed violate *Stern v. Marshall* and its progeny?
- P. Did the bankruptcy court err in denying Appellant’s Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 including, but not limited to by:
 - 1. declining to consider disclosures that demonstrated that Appellant is “in the money”—an issue pertinent to the court’s erroneous standing decisions; and
 - 2. concluding that the disclosures failed to reinforce Appellant’s standing to pursue the claims presented?

[Dkt. 3936].

II.
DESIGNATION OF ITEMS FOR INCLUSION
IN THE APPELLATE RECORD

Vol. 1
1. Notice of Appeal

- a.** Notice of Appeal [Dkt. 3906];
- b.** Amended Notice of Appeal [Dkt. 3908]; and
- c.** Second Amended Notice of Appeal [Dkt. 3945]

2. The judgment, order, or decree appealed from:

- a.** Memorandum Opinion and Order Pursuant to Plan “Gatekeeper Provision” and Pre-Confirmation “Gatekeeper Orders”: Denying Hunter Mountain Investment

000835
000940

Trust's Emergency Motion for Leave to File Adversary Proceedings [Dkts. 3903 & 3904]; and

001045

- b. Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 [Dkt. 3936].

3. Docket sheet.

001049

- a. Bankruptcy Case No. 19-34054

4. Other Items to be included:

- a. HMIT hereby designates the following items in the record on appeal from Cause No. 19-34054-sgj11:

Vol. 2	FILE DATE	DOCKET NO. (INCLUDING ALL ATTACHMENTS AND APPENDICES)	DESCRIPTION
001594	01/22/2021	1808	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)
001660	02/22/2021	1943	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief
001821	09/09/2022	3503	Motion to Conform Plan filed by Highland Capital Management, L.P.
001830	02/27/203	3671	Memorandum Opinion and Order on Reorganized Debtor's Motion to Conform Plan
Vol. 3 001849	03/28/2023	3699 (3699-1 — 3699-5)	HMIT Emergency Motion for Leave to File Verified Adversary Proceeding and Attached Verified Adversary Complaint
Vol. 4 002236	03/28/2023	3700 (3700-1)	HMIT Motion for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding
002243	03/30/2023	3704	Farallon, Stonehill, Jessup and Muck Objection to Motion for Expedited Hearing
002248	03/30/2023	3705	HMIT Amended Certificate of Conference

Vol. 5 002251	03/30/2023	3706	HMIT Amended Certificate of Conference
002254	03/30/2023	3707	Highland's Response in Opposition to Emergency Motion for Leave
002262	03/30/2023	3708 (3708-1 — 3708-8)	Declaration of John Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding
002348	03/31/2023	3712	HMIT Reply in Support of Application for Expedited Hearing
002355	03/31/2023	3713	Order Denying Motion for Expedited Hearing
002358	04/04/2023	3718 (3718-1 — 3718-4)	HMIT Motion for Leave to File Appeal
002391	04/04/2023	3719 (3719-1)	HMIT Motion for Expedited Hearing on Motion for Leave to File Appeal
002398	04/05/2023	3720	Order Denying HMIT's Opposed Motion for Expedited Hearing
002400	04/05/2023	3721 (3721-1 — 3721-2) Thru Vol. 7	HMIT Notice of Appeal
Vol. 8 002826	04/06/2023	3726 (3726-1) Thru Vol. 9	Certificate of Mailing regarding HMIT Notice of Appeal
Vol. 9 003257	04/07/2023	3731	Notice of Docketing Transmittal of Notice of Appeal
003260	04/13/2023	3738 (3738-1)	Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to HMIT's Emergency Motion for Leave
003270	04/13/2023	3739	Highland's Motion for Expedited Hearing
003278	04/13/2023	3740	Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date With Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding filed by Farallon

		Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC	
1	04/13/2023	3741	Notice of Hearing for 04/24/2023 at 1:30 PM
6	04/13/2023	3742	Amended Notice of Hearing for 04/24/2023 at 1:30 PM
11	04/13/2023	3745	Notice of Appearance and Request for Notice by Omar Jesus Alaniz filed by James P. Seery Jr.
94	04/15/2023	3747	Joinder by James P. Seery Jr. to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding
6	04/17/2023	3748	HMIT's Response and Reservation of Rights
9	04/19/2023	3751	Notice of Status Conference
02	04/21/2023	3758	HMIT's Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability"
1	04/21/2023	3759	HMIT's Notice of Rescheduling Hearing
14	04/21/2023	3761	HMIT's Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability" ³
23	04/23/2023	3760 (3760-1)	HMIT's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding and Attached Verified Adversary Complaint
8	04/25/2023	3765	Transcript of Hearing held on 04/24/2023
30	05/11/2023	3780	Objection to Hunter Mountain Investment Trust's (i) Emergency Motion for Leave to File Verified Adversary Proceeding; and (ii) Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck

³ A duplicate of Doc 3758.

Vol. 10 003458		Holdings LLC, Stonehill Capital Management LLC
003463	05/11/2023 3781	Order Fixing Briefing Scheduling and Hearing Date with Respect to HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented
Vol. 11 003537	05/11/2023 3783	Highland and Seery's Joint Response to HMIT's Emergency Motion for Leave
Vol. 17 004665	05/11/2023 3784 (3784-1 — 3784-46) Thru Vol. 16	Declaration of John Morris in Support of Highland Parties' Joint Response
004712	05/18/2023 3785	HMIT's Reply in Support of Emergency Motion for Leave to File Adversary Proceeding
004714	05/22/2023 3787	Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE##3699 & 3760]
004808	05/24/2023 3788 (3788-1 — 3788-5)	HMIT's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing
004813	05/24/2023 3789	HMIT's Application for Expedited Hearing
004836	05/24/2023 3790	Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE##3699 & 3760]
Vol. 18 004930	05/25/2023 3791 (3791-1 — 3791-5)	HMIT's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing
004931	05/25/2023 3792	Order Setting Expedited Hearing
	05/25/2023 3795	Objection to Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC

05/25/2023	3798 (3798-1)	Highland Parties' Joint Response in Opposition to HMIT's Emergency Motion for Expedited Discovery
05/26/2023	3800	Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing
05/28/2023	3801	Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing
06/05/2023	3815 (3815-1)	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding
06/05/2023	3816 (3816-1)	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding
06/05/2023	3817 (3817-1 — 3817-5)	Highland Parties' Witness and Exhibit List with Respect to Evidentiary Hearing on June 8, 2023
06/05/2023	3818 (3818-1 — 3818-9)	HMIT's Witness and Exhibit List in Connection with its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement
06/07/2023	3820	Highland Parties' Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully
06/07/2023	3821 (3821-1 — 3821-3)	Declaration in Support of Highland Parties' Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully
06/07/2023	3822 (3822-1)	HMIT's Unopposed Motion to File Exhibit Under Seal [WITHDRAWN]
06/07/2023	3823	Joinder to Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC

06/07/2023	3824	HMIT's Objections to the Highland Parties' Exhibit and Witness List
06/08/2023	3828	HMIT's Response to Highland Claimant Trust and James P. Seery, Jr.'s Joint Motion to Exclude Testimony and Documents of Experts Scott Van Meter and Steve Pully
06/09/2023	3837	Request for transcript regarding hearing held on 06/08/2023
06/12/2023	3838	Court admitted exhibits on hearing June 8, 2023 (See Docket Entry Nos. 3817 & 3818)
06/12/2023	3841	Highland Parties' Reply in Further Support of their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully
06/12/2023	3842 (3842-1)	Claim Purchasers' Joinder to Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery Jr.'s Reply in Further Support of Their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023
06/13/2023	3844	Transcript regarding Hearing Held 05/26/2023
06/13/2023	3845	HMIT's Request for Oral Hearing or, Alternatively, a Schedule for Evidentiary Proffer
06/13/2023	3846	Response in Opposition to Hunter Mountain Investment Trust's Request for Oral Argument or, Alternatively, a Schedule for Evidentiary Proffer filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr.
06/13/2023	3847	HMIT's Reply to the Highland Parties' Response to Request for Oral Hearing
06/16/2023	3853	Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence

Vol. 42 009928	06/16/2023	3854	Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence
009944	06/19/2023	3858 (3858-1 — 3858-2)	Hunter Mountain Investment Trust's Evidentiary Proffer Pursuant to Rule 103(a)(2) ⁴
010013	06/23/2023	3860	The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer
010023	06/23/2023	3861	Claim Purchasers' Joinder to the Highland Parties' Objections and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer
010025	07/05/2023	3869	Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) and Limiting Briefing
010029	07/06/2023	3872	Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust filed by Debtor Highland Capital Management, L.P. and the Highland Claimant Trust
010035	07/21/2023	3888	Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 filed by Highland Capital Management, L.P.
010047	07/21/2023	3889	Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 filed by the Highland Claimant Trust
010059	08/17/2023	3901	Withdrawal of HMIT's Unopposed Motion to File Exhibit Under Seal filed by Creditor Hunter Mountain Investment Trust
Vol. 43 010062	09/08/2023	3905 (3905-1 — 3905-6)	Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief Filed by Creditor Hunter Mountain Investment Trust

⁴ HMIT understands that the Court struck this proffer in docket entry 3869. Because the proffer appears to remain on the record and to avoid any argument that HMIT has failed its burden to designate the record, HMIT designates this docket entry out of an abundance of caution.

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09/11/2023	3907	Clerk's Correspondence regarding HMIT's Notice of Appeal
09/22/2023	3928	Notice Regarding Appeal and Pending Post-Judgment Motion filed by HMIT

B. Exhibits.

Further, the Parties submitted hearing exhibits. HMIT designates for inclusion in the record for appeal all the hearing exhibits submitted to the Court, which were all electronically filed and are in the Court's record and are a part of this Appellate Record. (Docs. 3817 and 3818). The following exhibits are submitted and included in the Court's record:

<u>HMIT Exhibits</u> (Dkts. 3818, 3818-1, 3818-2, 3818-3, 3818-4, 3818-5, 3818-6, 3818-7, 3818-8, and 3818-9)
HMIT Exhibits 1-4, 6-80
<u>HCM Exhibits</u> (Dkts. 3817, 3817-1, 3817-2, 3817-3, 3817-4, 3817-5)
HCM Exhibits 2-15, 25-34, 36, 38-42, 45-46, 51, 59-60, 100

Dated: October 23, 2023

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY
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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served via ECF notification on October 23, 2023, on all parties receiving electronic notification.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

1 A. Not that I recall, no.

2 Q. So your company that you were recently involved
3 in, Guggenheim Securities LLC, has never been involved
4 in investing in or purchasing claims in bankruptcy
5 proceedings?

6 A. I never said such a thing.

7 Q. That's my question, though.

8 A. No. You said "so." And so the answer is, in
9 the things that I worked on at Guggenheim, no. I don't
10 know what else they've done in the securities business.

11 Q. You were co-head of credit at Guggenheim
12 Securities LLC; is that correct?

13 A. That's correct.

14 Q. And what was your responsibility as the co-head
15 of credit at Guggenheim Securities?

16 A. We were trying to build a new-issue credit
17 business as part of the Guggenheim Securities investment
18 bank.

19 Q. Guggenheim Securities, you left -- you left
20 that position in 2019?

21 A. I left that position in 2019, yes. That's
22 correct.

23 Q. And where are you now?

24 A. At Highland Capital.

25 Q. Is that your only official company affiliation?

1 A. That's correct.

2 Q. And you left Guggenheim Securities, then, in
3 connection with becoming the CEO of Highland Capital?

4 A. No.

5 Q. Why did you leave Guggenheim Securities?

6 A. The credit business opportunity and strategy
7 wasn't really working, wasn't a good fit for me or for
8 Guggenheim. And they ultimately decided not to pursue
9 that business.

10 Q. You've served as a trustee or as -- let me back
11 that up.

12 You served as a chief restructuring officer
13 in bankruptcies other than the Highland Capital
14 bankruptcy proceeding, correct?

15 A. That's incorrect.

16 Q. Is the only time you've ever served as chief
17 restructuring officer in connection with the Highland
18 Capital bankruptcy proceeding?

19 A. Yes.

20 Q. Have you ever served as a CEO of a debtor in
21 possession in bankruptcy other than Highland Capital?

22 A. No.

23 Q. That was --

24 MR. STANCIL: Mr. Seery -- excuse me.

25 Mr. Seery, you have to give me a second

1 to --

2 THE WITNESS: I'm sorry.

3 MR. STANCIL: -- get on the Zoom.

4 So just objection to form.

5 Q. (By Mr. McEntire) All right. So the first time
6 you ever served as a CEO in connection with a debtor in
7 possession was the -- was the Highland Capital
8 proceeding, correct?

9 MR. STANCIL: Objection to form.

10 A. (No audible response.)

11 Q. (By Mr. McEntire) Sir?

12 A. Can I answer?

13 Q. Yes, you may. Unless he -- unless he instructs
14 you not to answer, I would ask that you answer.

15 A. Can -- can you repeat the question, please?

16 Q. Yes.

17 The first time you've ever served as a --
18 as a chief executive officer of a debtor in possession
19 was in connection with the Highland Capital proceeding?

20 A. Yes.

21 MR. STANCIL: Same objection.

22 Q. (By Mr. McEntire) I --

23 MR. MORRIS: Go ahead and answer.

24 Q. (By Mr. McEntire) I couldn't hear your answer
25 because he talked over you. I'm sorry. Go ahead.

1 A. Yes, I believe so.

2 Q. And for the record, for the clarity, the
3 only -- the first time you ever served as a chief
4 restructuring officer in connection with a -- a
5 bankruptcy proceeding was in connection with Highland
6 Capital; is that correct?

7 A. Yes.

8 Q. Have you ever served in a -- as a trustee in
9 connection with a bankruptcy proceeding other than
10 Highland Capital?

11 MR. STANCIL: Objection to form.

12 A. No.

13 Q. (By Mr. McEntire) So the only time, a figure of
14 time you've ever served as a trustee is in connection
15 with the Highland Capital Management proceeding,
16 correct?

17 MR. STANCIL: Objection to form.

18 A. Yes.

19 Q. (By Mr. McEntire) Did you personally undertake
20 any market studies to determine what a chief executive
21 officer is entitled to receive in terms of compensation
22 in a -- for a debtor in possession?

23 A. No, not market studies.

24 Q. Did you undertake any type of market study to
25 determine what a chief restructuring officer is entitled

1 to receive in compensation serving as a -- as a chief
2 restructuring officer for a debtor in possession?

3 A. I did not, no.

4 Q. Have you ever -- you currently serve as a
5 trustee under the terms of the claimant trust agreement
6 or the Highland Claimant Trust Agreement, do you not?

7 A. Yes.

8 Q. Have you ever undertaken a market study to
9 determine the -- the spectrum of compensation for a
10 trustee serving as a trustee similar to the duties that
11 you were discharging as the trustee under the claimant
12 trust agreement?

13 A. I'm sorry. Could -- could you repeat that
14 question?

15 Q. I would like to know whether you personally
16 undertook any type of market study to determine the
17 spectrum of compensation that is typically awarded to a
18 trustee similar to the duties that you undertook and are
19 undertaking in connection with the Highland bankruptcy
20 reorganized debtor proceedings?

21 MR. STANCIL: Objection to form.

22 A. No.

23 Q. (By Mr. McEntire) Are you involved in any
24 bankruptcy proceedings currently, other than the
25 Highland Capital proceedings?

1 A. No.

2 Q. Do you have any business dealings with Farallon
3 Capital Management or Stonehill Capital Management,
4 other than in connection with the Highland Capital
5 Management proceedings?

6 MR. STANCIL: Objection to form.

7 A. No.

8 Q. (By Mr. McEntire) Do you consider yourself to
9 be knowledgeable about claims trading generally?

10 A. I think I have a fair knowledge of claims
11 trading, yes.

12 Q. Fair enough. Thank you.

13 Can you tell me from what is the basis of
14 your familiarity and -- and understanding of that
15 process?

16 A. I've been a restructuring attorney for
17 30 years. I've been in and around the restructuring
18 community and businesses for that amount of time. I've
19 worked in businesses with distressed investors and have
20 been involved in numerous bankruptcy cases.

21 Q. Have you ever represented a company or -- or an
22 individual in connection with investigating and
23 acquiring a claim in a bankruptcy proceeding?

24 MR. STANCIL: Objection to form.

25 A. I -- I don't -- I don't recall if I -- if I

1 ever had that role specifically, no.

2 Q. (By Mr. McEntire) As it relates to claims
3 trading, have you had any role in either selling or
4 acquiring?

5 And I'm setting aside Highland Capital
6 Management for -- in the interest of fairness to you.
7 I'm asking -- I'm just trying to ascertain your
8 background.

9 A. I'm taking it as a background question.

10 I've certainly been in and around trading
11 of investments and interests in bankruptcy -- bankrupt
12 companies and bankers in cases. And I'm just not
13 recalling off the top of my head trading of claims.

14 Q. Fair enough.

15 In what capacities, then, have you become
16 specifically familiar with the process of claims
17 trading?

18 MR. STANCIL: Objection to form.

19 A. Again, it's part of the general knowledge of
20 being in and around this business, certainly in
21 connection with trading of loans in bankruptcy cases or
22 trading bonds in bankruptcy cases. I'm just not
23 recalling ever trading specifically claims.

24 Q. (By Mr. McEntire) Were you involved as a --
25 a -- a -- have you ever represented a -- a purchaser of

1 a loan or a distressed asset in bankruptcy?

2 MR. MORRIS: I'm sorry. Could I have that
3 question again?

4 MR. MCENTIRE: Certainly.

5 Q. (By Mr. McEntire) Have you ever represented a
6 purchaser in connection with the acquisition of a
7 distressed asset in bankruptcy?

8 MR. MORRIS: Thank you.

9 MR. STANCIL: Objection to form.

10 A. Yeah, that was a different question.

11 Q. (By Mr. McEntire) I apologize if it is. That
12 is my question, though.

13 A. So distressed asset, yes.

14 Q. Okay. And did you perform due diligence or
15 otherwise oversee due diligence in connection with that
16 acquisition?

17 A. Probably not.

18 Q. Okay. Did you delegate that to someone else or
19 was due diligence undertaken by someone else?

20 A. The client would have done the due diligence.

21 Q. What type of due diligence would the client
22 have -- generally have undertaken?

23 MR. MORRIS: Objection.

24 MR. STANCIL: Objection to form.

25 A. It depends on the asset.

1 Q. (By Mr. McEntire) Well, I'm talking about a
2 distressed asset. What type of due diligence, generally
3 speaking, would you expect a client to undertake?

4 MR. MORRIS: Objection.

5 MR. STANCIL: Objection to form.

6 A. To make sure that they know what the asset is,
7 how they view the value of the asset, the ownership
8 history of the asset, liabilities in connection with the
9 asset, regulatory issues in connection with purchasing
10 the asset, licensing issues in connection with
11 purchasing the asset. There's a myriad of things that
12 the investor would think about when they're buying an
13 asset out of a distressed company.

14 Q. (By Mr. McEntire) And you would classify a
15 company that's in bankruptcy to be a distressed company;
16 is that fair?

17 MR. STANCIL: Objection to form.

18 A. Yes.

19 Q. (By Mr. McEntire) In connection with the trades
20 involving Muck, Jessup, Farallon, and Stonehill, they
21 refer to themselves as the claim purchasers. Are you
22 familiar with that?

23 A. If I'm familiar with how they refer to
24 themselves?

25 Q. Yes, through the various pleadings and motions.

1 I'm just trying to get a -- a -- a defined term so we
2 don't have to waste a lot of time talking about each
3 individual entity.

4 So if I refer to Muck, Jessup, Stonehill,
5 and Farallon as the claims purchasers, will you
6 understand what I'm referring to?

7 A. Yes.

8 Q. Fair. Thank you.

9 Did you provide any type of data room to
10 the claims purchasers in connection with their
11 investigation or due diligence relating to the claim
12 purchases at issue?

13 MR. STANCIL: Objection to form.

14 A. Not related to the -- to the claim purchases,
15 no.

16 Q. (By Mr. McEntire) Did you provide any documents
17 to the claim purchasers to review or consider in
18 connection with any due diligence they may have
19 conducted related to the claim purchasers -- the claim
20 purchases?

21 A. Not related to the claim purchases, no.

22 Q. Did you provide any documents at all to -- to
23 the claim purchasers in connection with their
24 involvement in this matter?

25 A. To Farallon and to Stonehill, yes.

1 Q. What did you provide and when?

2 A. The -- the "you," "what did you," I want to
3 make sure we're clear about "you." It was not me. It
4 was Highland Capital that provided data to Farallon and
5 to Stonehill.

6 Q. Fair enough. Let's make sure the record is
7 clear. Did Highland Capital make available a data room
8 to the claims purchasers in connection with these claim
9 purchases?

10 A. The answer is no.

11 Q. To your knowledge, did Highland Capital provide
12 any documents to the claims purchasers in connection
13 with any due diligence they may have conducted in
14 connection with the claim purchases?

15 A. The answer is no.

16 Q. What information did Highland Capital provide,
17 if you know, to the claim purchasers in connection with
18 their involvement in this matter?

19 A. Highland provided information to Farallon and
20 to Stonehill subject to nondisclosure agreements in
21 connection with exit financing that Highland was
22 investigating to exit bankruptcy.

23 Q. When did they sign the -- we'll refer to those
24 as "NDAs." When did they sign the NDAs?

25 A. They signed NDAs in the beginning of April,

1 April --

2 Q. 20 --

3 A. The end of the first week, beginning of the
4 second week of April 2021.

5 Q. 2021. And the purpose of those NDAs, what were
6 they reviewing that you required the NDA specifically?

7 A. We conducted a process by which we sought exit
8 financing for Highland. We went to multiple potential
9 financiers to get letters of interests in order to see
10 data that would help them develop a letter of interest.
11 If they were so interested, they signed NDAs. Each of
12 the potential financiers signed an NDA, including
13 Farallon, including Stonehill. And then they did work
14 in a data room. And they received information. And
15 they either determined to make a -- present a letter of
16 interest or not.

17 Q. Did both Farallon and Stonehill have access to
18 a data room in connection with this NDA?

19 A. Yes.

20 Q. Did they send representatives to the data room
21 in connection with this NDA?

22 A. I don't know who they -- they sent. I didn't
23 run the data room. So I don't know which -- which
24 entity sent which people. But the way you phrased it,
25 did they send representatives to a data room? It's --

1 it's -- it's virtual.

2 Q. Fair enough.

3 A. No one goes to a room.

4 Q. Sure. I understand. So we'll talk about the
5 virtual data room then.

6 You indicated that this -- did Highland
7 Capital solicit Farallon and Stonehill to determine
8 whether they'd be interested in providing the exit
9 financing in whole or in part?

10 A. Yes.

11 Q. Did Farallon or Stonehill provide exit -- exit
12 financing in whole or in part?

13 A. Neither of them provided exit financing. They
14 did provide indications of interest and -- but they
15 didn't provide the financing.

16 Q. Did -- did you -- you say they did provide
17 indications of interest. Did they explain to you why
18 they ultimately decided not to provide the exit
19 financing?

20 MR. MORRIS: Objection to the form of the
21 question.

22 A. They -- they -- they each explained their own
23 reasons for what they did. They each did different
24 things.

25 Q. (By Mr. McEntire) Fair enough.

1 Did Farallon provide as explanation in
2 writing either in whole or in part?

3 A. Not in writing, no.

4 Q. Did Stonehill provide its explanation in
5 writing either in whole or in part?

6 A. Stonehill -- you're presuming Stonehill was not
7 interested. Stonehill was interested.

8 Q. I understand. But they ultimately did not
9 participate. So at some point in time, they would have
10 indicated that they did not want to go forward, correct?

11 MR. MORRIS: Objection to the form of the
12 question.

13 MR. STANCIL: Objection to form.

14 A. That's just completely incorrect.

15 Q. (By Mr. McEntire) So did Stonehill actually
16 provide exit financing?

17 A. No. Stonehill did not provide exit financing.

18 Q. Was that your decision or was that Stonehill's
19 decision not to do so?

20 A. That was my decision.

21 Q. Okay. And why did you not want Stonehill to be
22 involved in your exit financing?

23 A. They got beaten out of the process.

24 Q. All right. Did they actually submit a bid to
25 participate?

1 A. It's not a bid. It's a letter of interest.

2 Q. Okay. Did Farallon ever provide a letter of
3 interest?

4 A. They did not.

5 Q. Did Farallon ever explain to you verbally --
6 you indicated there was no writing. Did they -- did
7 Farallon ever express to you verbally why they did not
8 want to pursue the exit financing role?

9 A. Yes.

10 Q. And what was -- what was their explanation?

11 A. It's not really what they do. While they
12 already own claims in the case and were interested in
13 the case, it wasn't really something that they were set
14 up to do. They didn't think the return was attractive
15 enough since other people were more competitive.

16 Q. So in listening to your answer, to be clear,
17 Farallon had already made its investment in the claims
18 before they had access to your data room; is that
19 correct?

20 A. That's correct.

21 Q. And Stonehill had already had -- been involved
22 in investing in claims before they signed the NDA as
23 well; is that correct?

24 A. I don't know.

25 Q. You just don't recall?

1 MR. MORRIS: Objection to the form of the
2 question.

3 A. I don't -- I don't think I know.

4 Q. (By Mr. McEntire) Fair enough.

5 You indicated earlier that the NDAs were
6 signed in the first or second week of April of 2021. Do
7 you recall that generally?

8 MR. MORRIS: Objection to the form of the
9 question.

10 A. Generally, yes.

11 Q. (By Mr. McEntire) When -- do you know when
12 Farallon reached an agreement with the sellers of the
13 claims in which it invested, the date, generally?

14 A. I know when they told me they did.

15 Q. And what did they tell you?

16 A. March 15th, 2021. That's when they told me. I
17 don't know what date that they actually did it. That's
18 when they told me they owned interest in claims.

19 Q. Is there a document that would -- that you've
20 looked at that would refresh your memory in that regard?

21 A. I would have to look at my -- they told me in
22 writing in an e-mail. I'd have to check it.

23 Q. All right. Did Stonehill ever advise you when
24 it reached an agreement in connection with its
25 investments in the claims at issue?

1 A. No.

2 Q. Do you have anything in writing or otherwise to
3 indicate when that date may have been, generally falling
4 within the month of February or March of 2021?

5 A. I --

6 MR. STANCIL: Objection to form.

7 A. I don't recall ever knowing when Stonehill
8 acquired their claims with any precision.

9 Q. (By Mr. McEntire) Fair enough.

10 Do you know whether it was in March or
11 April of 2021?

12 A. I don't know.

13 Q. You certainly were aware that the investments
14 had been consummated before the notice of assignments
15 and transfers that were filed in bankruptcy court,
16 correct?

17 MR. STANCIL: Objection to form.

18 MR. MORRIS: Form of the question.

19 A. I knew -- I knew that Farallon had acquired
20 claims before that. I don't believe I knew that
21 Stonehill knew that. And I don't know when I learned
22 that they filed notices of transfer.

23 Q. (By Mr. McEntire) I will present to you that
24 Far- --

25 THE WITNESS: I'm not done yet.

1 Q. (By Mr. McEntire) -- Farallon filed --

2 MR. MORRIS: Let him finish --

3 THE WITNESS: I'm not done yet.

4 MR. MCENTIRE: I'm sorry. I thought you
5 were. I certainly did not mean to interrupt you. Go
6 ahead.

7 A. I don't recall ever talking to them about
8 acquiring their claims or when they did it. At some
9 point, it was clear that they had acquired a claim. But
10 I don't have any recollection of when that was.

11 Q. (By Mr. McEntire) Okay. Who -- who -- who do
12 you deal with historically -- let me rephrase that
13 question. That's poor.

14 Who do you know at Farallon in terms of
15 principals or your contact individuals at Farallon? Who
16 do you deal with?

17 MR. STANCIL: Objection to the form.

18 A. The -- the person responsible for this
19 investment at Farallon, to my understanding -- and he
20 sits on the claimant trust board -- is Mike Linn.

21 Q. (By Mr. McEntire) Do you know Raj Patel?

22 A. I do know who he is, yes.

23 Q. Have you ever met Raj Patel?

24 A. I believe I've met Raj Patel twice.

25 Q. Have you ever met Mike Linn?

1 A. He's on the oversight board. I talk to him
2 every week. And I've met him personally during this
3 case since he became part of the oversight board.

4 Q. Have you ever met with Mike Linn before he
5 became a part of the oversight board?

6 A. I believe I met him once.

7 Q. Did you represent Farallon in connection with
8 any bankruptcy proceedings in the past unrelated to
9 Highland Capital?

10 A. I have never represented Farallon in any
11 capacity whatsoever.

12 Q. Have you ever assisted Farallon in connection
13 with any prior bankruptcy, assisting them in connection
14 with the bankruptcy or the reorganization of Lehman
15 Brothers?

16 MR. STANCIL: Objection to form.

17 A. Never whatsoever.

18 Q. (By Mr. McEntire) Toys"R"Us?

19 A. Never whatsoever.

20 Q. Blockbuster?

21 A. Never whatsoever.

22 Q. Were you involved in the Toys"R"Us bankruptcy
23 proceedings?

24 A. Never whatsoever.

25 Q. Were you involved in the Blockbuster bankruptcy

1 proceedings?

2 A. Yes.

3 Q. What was your role and capacity?

4 A. I was counsel for a lender group.

5 Q. Was Farallon a member of that lender group?

6 A. No.

7 Q. Was Stonehill a member of that lender group?

8 A. Apparently, according to your pleading, they
9 were.

10 Q. Did Lehman Brothers actually go into
11 bankruptcy?

12 A. It depends on which entity you're talking
13 about.

14 Q. Well, did you play any role in connection with
15 the Lehman Brothers bankruptcy?

16 MR. STANCIL: Objection to form.

17 A. The answer is I was responsible for helping
18 sell Lehman Brothers Inc. to Barclays for efforts to try
19 to keep Lehman Brothers Holdings out of bankruptcy.
20 When Lehman Brothers Holdings filed, I no longer had any
21 involvement with Lehman Brothers Holdings.

22 Q. (By Mr. McEntire) Did you provide any
23 assistance to Farallon in any way, directly or
24 indirectly, in connection with the Lehman Brothers
25 reorganization or sale?

1 A. No.

2 MR. STANCIL: Objection to form.

3 Q. (By Mr. McEntire) Did you provide any
4 assistance to Stonehill in any capacity in connection
5 with the Lehman Brothers reorganization or sale?

6 A. No.

7 MR. STANCIL: Objection to form.

8 Q. (By Mr. McEntire) You said you had met Michael
9 Linn before his involvement in this -- this proceeding.
10 How did you come to know Mr. Linn?

11 MR. MORRIS: Objection to the form.

12 A. I didn't come to know Mr. Linn. I met him at a
13 meeting at Farallon after I left Guggenheim.

14 Q. (By Mr. McEntire) What was the purpose of that
15 meeting?

16 A. Meet and greet.

17 Q. All right. So after 2019, you met Mr. Linn at
18 Farallon at a meet and greet. What was the purpose of
19 the meet and greet and who were you representing?

20 MR. MORRIS: Objection to the form of the
21 question.

22 A. The purpose was to meet and to greet. I wasn't
23 representing anybody. I was on my own.

24 Q. (By Mr. McEntire) Were you soliciting business?

25 A. No. I was meeting and greeting and hoping

1 there would be business down the line. I didn't have a
2 particular role. And I was looking to get back to the
3 investing side.

4 Q. Were you -- were you seeking a position with
5 Farallon?

6 A. No.

7 Q. Were you affiliated with any type of business
8 entity at the time of this meet and greet?

9 A. No.

10 Q. Were you simply a solo practitioner at that
11 point?

12 A. No, I was not a solo practitioner.

13 Q. What company were you affiliated with?

14 MR. MORRIS: Objection to the form of the
15 question.

16 A. I wasn't affiliated with any company.

17 Q. (By Mr. McEntire) Okay. You were hoping to get
18 back into the investment side of the business. So did
19 you solicit an opportunity to meet Mr. Linn and other
20 executives at Farallon?

21 A. No.

22 MR. STANCIL: Objection to form.

23 Q. (By Mr. McEntire) I'm sorry?

24 A. No. I don't think that's a fair
25 characterization.

1 Q. How did the meet and greet come to -- come to
2 pass? Who organized it and who reached out to whom?

3 A. I organized it. I was going to be in San
4 Francisco. And I asked Raj if he had time. I had met
5 him once before while I was at Guggenheim. And he
6 indicated he did. And he wanted Mike to go to the
7 meeting, to my recollection.

8 Q. All right. And how did you know Raj Patel from
9 Guggenheim -- when you were at Guggenheim?

10 A. I was at a meeting at -- with Raj Patel with a
11 group from Guggenheim at a similar type of meet and
12 greet. And I -- I didn't organize that meeting. But I
13 believe I had heard of Raj. We may have talked at some
14 point over the past 30 years.

15 Q. Who do you deal with principally at Stonehill?

16 MR. STANCIL: Objection to form.

17 A. I -- I don't deal with anybody principally at
18 Stonehill.

19 Q. (By Mr. McEntire) Do you know anyone at
20 Stonehill?

21 A. I know Michael Stern. He is now responsible
22 for the Stonehill investment in -- in Highland. And I
23 got to know him in this matter only.

24 Q. Did you not know anyone from Stonehill prior to
25 their involvement in -- in this -- in the Highland

1 Capital bankruptcy?

2 MR. STANCIL: Objection to form.

3 Q. (By Mr. McEntire) I'm sorry?

4 A. No. I -- I -- I did know at least one other
5 person there.

6 Q. Who was that?

7 A. Jonathan Sacks.

8 Q. How did you know Jonathan Sacks?

9 A. I had gotten to know Jonathan a little bit over
10 the years. I had not, to my recollection, done any
11 business with him. But you seem to indicate that they
12 were involved in Blockbuster. But their interest must
13 have been really small because I have no recollection of
14 it. And while at Guggenheim, I solicited -- solicited a
15 financing proposal from Jonathan for a company that --
16 it didn't come -- he gave a proposal. But the financing
17 didn't come to fruition.

18 Q. The meet and greet at Farallon, at Farallon's
19 offices in -- you said in San Francisco?

20 A. Yes.

21 Q. You left Guggenheim in 2019. When did you have
22 this meet and greet?

23 A. In 2019.

24 Q. And when did you become involved in the
25 Highland Capital bankruptcy?

1 A. In January of 2020.

2 Q. Is that the only time you had met Michael Linn
3 before their involvement in the bankruptcy proceedings
4 at issue?

5 A. Yes.

6 Q. Did -- when is the first time -- after you
7 became the CEO of Highland Capital and the chief
8 restructuring officer, what is the first contact that
9 you remember having with Farallon?

10 A. After I became the CEO and chief restructuring
11 officer, the first contact I recall was in January of
12 2021.

13 Q. Can you still hear me, Mr. Seery?

14 A. Yes.

15 MR. MCENTIRE: Something has happened to
16 my -- there we go. I apologize.

17 By the way, Tim, you can take down the --
18 the exhibit.

19 That's better.

20 Q. (By Mr. McEntire) You said January of 2021.
21 When is the first time that you recall communicating
22 with a representative of Stonehill after you became the
23 CEO, CRO of Highland?

24 A. It was the end of February or the beginning of
25 March 2021.

1 Q. Who contacted you in January of 2021 on behalf
2 of Farallon?

3 MR. STANCIL: Objection to form.

4 Q. (By Mr. McEntire) I'm sorry?

5 MR. STANCIL: Objection to form.

6 A. Michael Linn.

7 Q. (By Mr. McEntire) Did you call Michael Linn, or
8 did Michael Linn call you?

9 MR. MORRIS: Objection --

10 MR. STANCIL: Objection to form.

11 A. Neither.

12 Q. (By Mr. McEntire) What happened? How did the
13 communication occur?

14 A. Mr. Linn sent me an e-mail.

15 Q. All right. And does that e-mail still exist?

16 A. Of course.

17 Q. You said "of course"?

18 A. I said "of course."

19 Q. Is that because, as the CEO of Highland
20 Capital, you have an obligation to preserve documents?

21 MR. MORRIS: Objection.

22 MR. STANCIL: Objection to form.

23 MR. MORRIS: Answer.

24 A. It's because --

25 MR. STANCIL: It calls for a legal

1 conclusion.

2 A. Because it still exists.

3 Q. (By Mr. McEntire) Well, have you -- have you
4 taken any steps, in your capacity as the CEO of Highland
5 Capital, to make sure that your communications are
6 preserved?

7 MR. STANCIL: Objection.

8 Mr. McEntire, this is beyond the scope of
9 the discovery you're authorized to take in this matter.

10 MR. MCENTIRE: No, it's not. If you want
11 to instruct him not to answer, you should do so. But I
12 don't want to waste my time arguing with you.

13 MR. STANCIL: Well, Mr. McEntire, I will
14 instruct the witness not to answer. The document and
15 communication preservation practices are not relevant.
16 And I think we're both aware of a motion filed by
17 another Dondero affiliate yesterday or day before
18 yesterday. And it's simply beyond -- beyond the scope
19 of this. And we're not going to let him answer it.

20 Q. (By Mr. McEntire) So I'm going to just cut to
21 the quick real quick, Mr. Seery. If your lawyer,
22 Mr. Stancil, instructs you not to answer, I'll just take
23 it for granted that you're going to follow his
24 instructions, agreed?

25 A. Yes.

1 Q. Have you ever taken a deposition yourself
2 before, Mr. Seery?

3 A. Have I ever been deposed?

4 Q. No. I've already asked -- asked -- asked you
5 that question. Have you ever taken somebody's
6 deposition?

7 A. I believe I have, yes.

8 Q. Okay. January 2021, you have an e-mail
9 exchange with Michael Linn. What was the substance of
10 that e-mail?

11 A. Mr. Linn was saying hello mid to late -- I
12 recall it because it was mid to late January. And he
13 still said, "Kind of late to do a Happy New Year, but
14 Happy New Year." Wanted to find out basically if there
15 was something for him to do in the Highland case.

16 Q. What do you mean something for him to do? What
17 do you mean by that?

18 A. He --

19 MR. STANCIL: Objection to form.

20 MR. MORRIS: (Inaudible) of the question.

21 A. He indicated that there were potential claims
22 for sale that -- with Redeemer and UBS, I believe. And
23 wanted to know if there was a path to get information.

24 Q. (By Mr. McEntire) And what did you respond?
25 Did you respond by e-mail?

1 MR. STANCIL: Objection to form.

2 A. I didn't respond at all.

3 Q. (By Mr. McEntire) All right. So you didn't
4 pick up the phone, didn't talk to Mr. Linn? There was
5 no written response at all?

6 MR. MORRIS: Objection to the form of the
7 question.

8 A. I neither picked up the phone nor sent any
9 written response.

10 Q. (By Mr. McEntire) All right. Have you had any
11 further communications with Mr. Linn about the claims?

12 MR. STANCIL: Objection to form.

13 A. When he told me he bought the claims, he sent
14 me an e-mail in March of 2021, mid-March, and said that
15 he had purchased claims. That was the next
16 communication I had with him.

17 Q. (By Mr. McEntire) So what you're telling us is
18 that between the end of January of 20 -- mid to end of
19 January 2021, he sends you an e-mail wishing you a Happy
20 New Year, a belated Happy New Year, and wanted to
21 know -- get some information about the claims; is that
22 correct?

23 MR. STANCIL: Objection to form.

24 A. No, that's not correct. I think I said he --
25 he inquired if there was a way to get information and to

1 assign a consignee in order to be able to get
2 information. And I didn't respond to it.

3 Q. (By Mr. McEntire) Okay. Was he entitled to
4 sign a -- an NDA and gain access to information in order
5 to -- for him to evaluate a claims purchase?

6 MR. MORRIS: Objection.

7 MR. STANCIL: Objection to form.

8 A. If -- if somebody would have allowed him to
9 sign an NDA, then he may have been able to do whatever
10 the NDA permitted, depending on whether -- what the
11 entity would be and who they would be and whether they
12 had information that they were allowed to share.

13 Q. (By Mr. McEntire) Did you make a decision at
14 that time that you were not going to respond because you
15 would not allow any access to documents even if an NDA
16 had been signed?

17 MR. STANCIL: Objection to form.

18 A. No, I did not.

19 Q. (By Mr. McEntire) What was your reason for not
20 responding to Mr. Linn?

21 MR. MORRIS: Objection to the form of the
22 question.

23 A. I was extremely busy.

24 Q. (By Mr. McEntire) So it simply had to do with
25 your schedule, and that was the reason why you did not

1 respond; is that fair?

2 MR. MORRIS: Objection.

3 MR. STANCIL: Objection to form.

4 A. Yes. It just was something that was way down
5 the list of priorities at that time. And I wasn't rude.
6 But we were very busy.

7 Q. (By Mr. McEntire) All right. To your
8 knowledge, Mr. Linn never signed an NDA in connection
9 with the investigation of the claims, correct?

10 MR. STANCIL: Objection to form.

11 A. I don't know what claims you're talking about.
12 But he never -- he never signed an NDA with Highland
13 Capital in connection with these claims purchases, no.

14 Q. (By Mr. McEntire) That's what I meant, the
15 claims purchases. When I say "the claims," I'm talking
16 about the claims in which Farallon ultimately acquired
17 an interest, all right? You understood -- you
18 understood -- you understand my -- my -- the way I'm
19 trying to define this?

20 A. There's separate sets of claims. But I think I
21 answered it.

22 Q. When you say "there's a separate set of
23 claims," what are you referring to?

24 A. There's different claims that traded to
25 different entities.

1 Q. Fair enough. Okay.

2 Did -- did Stonehill ever sign an NDA in
3 connection with this investigation of its investment to
4 acquire these claims?

5 MR. STANCIL: Objection to form.

6 A. I don't believe so, no.

7 Q. (By Mr. McEntire) Did you have any
8 conversations with Jim Dondero concerning Farallon's
9 interest in connection with potentially investing --
10 investing in claims in the Highland Capital bankruptcy?

11 A. No.

12 MR. STANCIL: Objection to form.

13 Q. (By Mr. McEntire) Do you have any knowledge as
14 to whether these -- these claims, the claims that we're
15 referring to, were ever put out for bid?

16 A. I -- I have some knowledge, yes.

17 Q. Tell me what your knowledge is.

18 A. I believe that the claims for -- the claims of
19 UBS -- well, maybe not UBS. The -- I think the claim of
20 UBS and the claim of Redeemer may have been in some sort
21 of broker process or some sort of organized process.
22 And I believe the claim of HarbourVest may have been in
23 some organized process. I don't know about the Aces'
24 claim. And what I've heard on this is really post
25 effective date discussions of how they came to own their

1 claims.

2 Q. In connection with any brokerage process that
3 may have been affiliated, you had no personal knowledge
4 of any brokerage process, did you?

5 A. None whatsoever, no.

6 Q. Can you -- can you identify whether any entity
7 ever signed an NDA to have access to any type of data
8 room or information relating to Highland Capital in
9 connection with the potential purchase of the claims
10 that we're discussing?

11 A. I -- I don't think anybody signed an NDA in
12 connection with any claims purchases or any process.

13 Q. So you -- so sitting here today, to the -- to
14 the extent there was any type of bidding or brokerage
15 process, you're not aware of any company or individual
16 signing any NDA with Highland Capital; is that correct?

17 A. With Highland Capital, no.

18 Q. Are you aware of any -- any -- are you aware of
19 Farallon signing any NDA with any of the claims sellers?

20 A. I am not so -- I have no knowledge of that.

21 Q. Do you have any knowledge of Stonehill signing
22 any NDA in connection with any claims sellers?

23 A. I -- I have no knowledge of whether they --
24 they did or didn't. Not -- not that I recall with
25 either of them.

1 Q. What documents did you actually review to
2 prepare for this deposition?

3 MR. STANCIL: Objection to form.

4 So, Mr. McEntire, I would instruct
5 Mr. Seery not to identify attorney work product or any
6 conversations or discussions that he had with us. He
7 could identify documents he reviewed to refresh his
8 recollection in preparation for this deposition.

9 MR. MCENTIRE: Well, I certainly -- to make
10 it very clear, I would never ask you to disclose what --
11 what Mr. Stancil has advised you or discussed with you.
12 We'll put that to the side. That's in a -- that's in a
13 protected box.

14 Are you -- Mr. Stancil, are you claiming a
15 joint interest privilege with Mr. Morris that would also
16 stave off any questions related to his discussions with
17 Mr. Seery?

18 MR. STANCIL: Yes. We have a common
19 interest with Mr. Morris's firm and the Highland parties
20 in connection with this litigation, yes.

21 MR. MCENTIRE: And is there a written joint
22 defense agreement or a common interest agreement, just
23 so I know?

24 MR. STANCIL: I'm not going to answer that.

25 MR. MCENTIRE: All right. Fair enough.

1 Q. (By Mr. McEntire) Mr. Seery, I take it that,
2 then, that you will follow your counsel's instructions,
3 that you will not disclose any communications that
4 you've had with Mr. Morris or his firm relating to
5 preparing for this deposition; is that correct?

6 MR. MORRIS: And I'll direct him not to
7 answer that question. Well, he can answer -- he can
8 answer whether he'll follow Mr. Stancil's advice.
9 That's fine.

10 A. That's my intention to do so, yes.

11 Q. (By Mr. McEntire) All right. What documents
12 did you review to refresh your memory for purposes of
13 preparing for this deposition?

14 A. I don't recall any document review outside of
15 what I discussed with Mr. Stancil and Mr. Morris. I
16 certainly looked at the pleadings that you filed and the
17 prior hundreds of pages of attachments, spent various
18 amounts of time on each of them that you submitted as
19 your evidence. But I don't recall any other documents
20 that would be specific documents off the top of my head.

21 Q. Did you review any e-mails?

22 MR. STANCIL: Objection to form.

23 A. Not other than in connection with discussions
24 with Mr. Morris and Mr. Stancil.

25 Q. (By Mr. McEntire) Well, I'm not referring to

1 e-mails between you and the lawyers. But did you
2 review -- review any e-mails involving third parties
3 from whom you're not seeking legal advice?

4 MR. STANCIL: Mr. McEntire, I need to
5 figure out how to instruct him to answer or not answer.
6 Do you mean -- or would you please rephrase to be
7 specific as to whether he reviewed any e-mails to
8 refresh his recollection for this deposition?

9 MR. MCENTIRE: Well, it's my position,
10 Mr. Stancil, if he reviewed any e-mails, setting aside
11 the issue of what you define unilaterally as refreshing
12 his -- his recollection, if he's reviewed any
13 non-privileged e-mail, that's -- that's -- that should
14 be identified.

15 MR. STANCIL: But -- but reviewed in
16 preparation for his testimony in this deposition, not
17 just at any time.

18 MR. MCENTIRE: I'm asking specifically for
19 if he -- if he has looked at any non-privileged
20 communications not involving attorneys in connection
21 with him preparing for this deposition.

22 MR. STANCIL: Okay. You may answer,
23 Mr. Seery.

24 A. Certainly I've looked at -- in prepping for the
25 deposition with Mr. Stancil and Mr. Morris, I looked at

1 some e-mails that I received that didn't have
2 Mr. Stancil or Mr. Morris on them. But my review of
3 them was in connection with my preparation for the
4 deposition with them.

5 Q. (By Mr. McEntire) Well, I'd like you to
6 identify those e-mails then for me because I don't
7 consider those to be privileged. So I would like you to
8 identify those communications.

9 A. Not hearing any objection, I believe the e-mail
10 that I got from Mr. Linn in January of 2021. I believe
11 there's an e-mail in -- at the end of February after
12 confirmation from Mr. Stern. And generally e-mail in
13 connection with Farallon and Stonehill signing NDAs in
14 that first or second week of April.

15 Q. All right. Any other e-mail communications?

16 A. Not -- not that I recall off the top of my
17 head. Something ---

18 Q. How about -- how about text messages? Did you
19 review any text messages?

20 A. Yes. I would have reviewed text messages
21 around the same times.

22 Q. What text messages were those?

23 A. I believe the first communication from
24 Mr. Stern is a text message that introduces himself
25 and -- at the end of February 2021 and gives me his

1 e-mail and indicates that he wanted to talk about the
2 case which you just then confirmed.

3 Q. Any other text messages that you recall
4 reviewing?

5 A. If there were any along those series, it would
6 have been -- I would have -- I would have checked them
7 just to see if there were any communications. So there
8 would be some in there. But not -- not with any
9 substance. They would always say, "I'll call you back
10 in five minutes," that kind of stuff.

11 Q. Did you receive any -- you also indicated you
12 may have received an e-mail associated with that -- that
13 text message from Mr. Stern, and that would have
14 occurred at the end of February 2021?

15 A. He --

16 MR. STANCIL: Objection to form.

17 A. Yeah. I indicated he gave me his e-mail
18 address because he -- since I didn't know him, I didn't
19 have it.

20 Q. (By Mr. McEntire) Did you respond to his text
21 message or his e-mail?

22 A. I think over the -- my recollection is over the
23 next ten days or so, we did touch base by phone. I told
24 him there was nothing to do. And we then had some
25 correspondence back and forth over a period of time.

1 Q. Mr. Stern is with Stonehill?

2 A. That's correct.

3 Q. The initial January, Feb- -- excuse me. The
4 initial February 2021 e-mail where Mr. Stern contacted
5 you, what was -- what was the substance of that e-mail?
6 What did it say?

7 A. Mr. Stern didn't contact me in January of 2021.

8 Q. No. I said February. I'm sorry. I misspoke.
9 February.

10 A. He sent -- I believe it was a text. And he
11 gave me his address, his e-mail address. And then we --
12 we talked. I don't recall if it was text or e-mail and
13 how it got set up. But we spoke. And he was interested
14 in acquiring assets because he had seen that there was a
15 monetization plan and wanted to know how to get
16 involved. It had already been confirmed.

17 Q. So this is post confirmation in February of
18 2021, correct?

19 A. The end of February, correct.

20 Q. And he -- on behalf of Stonehill expressing an
21 interest in acquiring assets?

22 A. I believe assets. I don't know that he -- he
23 didn't -- I don't know if he mentioned claims or didn't
24 mention claims. He wanted to get involved in the -- in
25 the case in some way. At some point in that early

1 exchange told him we were very tied up, but we would try
2 to get back to him if there's something to do. We
3 hadn't figured out what we needed to do yet.

4 Q. All right. And so you had this one phone call.
5 When did the phone call take place? Or maybe it was
6 more than one?

7 A. I don't -- I don't recall speci- -- it would
8 have been after -- it would have been in the beginning
9 of March.

10 Q. All right. Did you have more than one phone
11 call?

12 A. I'm sure I did.

13 Q. Do you have a record of those phone calls?

14 A. Typically I would have some sort of either note
15 or there would be a text where he called me and I
16 replied "Five," which will mean I'll call you back
17 because I use --

18 Q. So your general recollection is that you had
19 more than one phone call with Mr. -- Mr. Stern?

20 A. One -- one or two. First was just a general
21 indication of interest. And then several weeks later,
22 there was some further discussion where we were working
23 on financing. And I told him that I'd get back to him.
24 And then several weeks later, which I think is towards
25 the end of -- beginning of April, wanted to know if he

1 still had any interest because we were working on
2 financing.

3 Q. Did you have any communications with
4 HarbourVest in connection with the sale of their --
5 their claim?

6 A. No.

7 Q. Did you have any communications with the
8 Redeemer Committee in any manner or form, and I'm
9 referring to both text messages, e-mail, or verbal
10 conversations or meetings with Redeemer Committee in
11 connection with the sale of their interest?

12 A. Not that I recall specifically. The only thing
13 I can recall with respect to Redeemer is that Redeemer
14 didn't actually handle the sales. But I was told by
15 Eric Felton. And he just said he wasn't involved. He
16 was the committee representative. So I had a discussion
17 with him inquiring as to whether they were selling their
18 claim at some point. I don't recall when it was. And
19 expressed my -- my view around it. And --

20 Q. What was your -- what was your view?

21 A. I was disappointed because I thought they were
22 a constructive partner in the case and that they were a
23 little less emotional around the multiyear litigation
24 than -- than others in the case might have been.

25 Q. Did you have any communications with Aces in

1 connection with the sale of its claim?

2 A. No.

3 Q. Did you have any communications with UBS -- and
4 I mean this broadly -- communication in connection with
5 the sale of its claim?

6 A. I -- I think I did. I think I did in August,
7 July or August of 2021.

8 Q. What was the context of that communication?

9 A. They -- their lawyer reached out and wanted to
10 know if we had an idea when we were going effective.
11 And the context of that question, my recollection is,
12 was that if they were going to do any sale of any or all
13 of their claim, they would have to do it before that
14 date.

15 MR. MCENTIRE: Ms. Court Reporter, I lost
16 track of his answer. Can you read back his answer,
17 please?

18 THE COURT REPORTER: Yes. Hold on. Okay.
19 (Sotto voce discussion off the written
20 record.)

21 MR. MCENTIRE: Can you repeat the answer
22 please, Ms. Court Reporter?

23 THE COURT REPORTER: I'm trying to. Hold
24 on.

25 (Requested portion read back.)

1 Q. (By Mr. McEntire) Did you express an opinion
2 whether it should be done before that date, or was that
3 their question to you? That's what I didn't understand.

4 A. They knew the answer, which was claims couldn't
5 be traded after the effective date. They were calling
6 to see if I knew when the effective date would be. And
7 we were working hard to try to get to an effective date.

8 Q. So all of the trades had to take place before
9 the effective date?

10 A. Yes.

11 Q. I want to shift gears for a second, Mr. --

12 (Interruption.)

13 Q. (By Mr. McEntire) -- Mr. Seery.

14 MR. MCENTIRE: Somebody is talking. If
15 you're going to talk, please put it on mute.

16 Q. (By Mr. McEntire) Mr. Seery, as the CEO of the
17 debtor in possession and as a lawyer -- you're
18 currently -- you're currently actively a lawyer; is that
19 correct?

20 A. That's incorrect.

21 Q. Have you suspended your license?

22 A. I have put it into -- I forget what they call
23 it in New York -- a hiatus, a semi-suspension, or
24 retirement. I'm not sure.

25 Q. When did that occur?

1 A. I don't recall if it was '21 registration or
2 '22 registration. I think it was '21. It's biannual.

3 Q. But you have been practicing as a lawyer for,
4 what, 30-plus years?

5 A. That's incorrect.

6 MR. STANCIL: Objection to form.

7 Q. (By Mr. McEntire) How long have you actually
8 engaged in the practice of law?

9 A. About ten years.

10 Q. That's when you were with Sidley Austin?

11 A. No. That's incorrect.

12 Q. Who were you with?

13 A. I started my career with Cadwalader. I went to
14 a firm called Phillips Nizer. Then I -- I left. And
15 then I had two years at Sidley Austin.

16 Q. Okay. In connection with your role as a CEO of
17 a debtor in possession, do you recognize that you have
18 fiduciary duties to the bankruptcy estate?

19 MR. STANCIL: Objection, calls for a legal
20 conclusion.

21 MR. MCENTIRE: You can answer.

22 MR. STANCIL: If you know.

23 A. I -- I believe -- I believe I have a fiduciary
24 duty to the estate or to -- to Highland, yes.

25 Q. (By Mr. McEntire) And what is the nature of

1 those duties?

2 MR. MORRIS: Objection --

3 MR. STANCIL: Objection to form.

4 MR. MORRIS: -- to the question.

5 A. I -- I don't know. I think it's just to act
6 honestly and fairly.

7 Q. (By Mr. McEntire) I'm sorry? I couldn't hear
8 you.

9 A. I think it's to act honestly and fairly with
10 respect to the -- to the estate.

11 Q. All right. And as the CEO of a debtor in
12 possession, did you have any fiduciary duties to the
13 equity, Hunter Mountain Investment Trust?

14 MR. STANCIL: Objection to form.

15 MR. MORRIS: Objection to the form of the
16 question.

17 A. I don't believe I had any fiduciary duties to
18 Hunter Mountain Investment Trust.

19 Q. (By Mr. McEntire) So you -- it's your -- it's
20 your position that you owe no duties at all to the
21 existing equity; is that -- is that your position?

22 MR. STANCIL: Objection to form.

23 MR. MORRIS: Could you repeat the question?

24 Q. (By Mr. McEntire) It's your position that you
25 owe no duties as the CEO of the debtor in possession,

1 you owe no duties to Hunter Mountain Investment Trust as
2 the equity; is that correct?

3 MR. MORRIS: Objection --

4 MR. STANCIL: Objection to form.

5 MR. MORRIS: -- form of the question.

6 A. Yeah. I think my -- my duties ran to the
7 estate in a bankruptcy situation, not to the individual
8 equity.

9 Q. (By Mr. McEntire) Were you involved in the
10 drafting of the claimant trust agreement?

11 A. I believe I read it before it was final. And
12 I'm sure I provided comments.

13 Q. Did you -- okay. Who was -- who negotiated the
14 claimant trust agreement, if there were a party and
15 counterparty? Was there a counterparty who drafted that
16 or involved?

17 A. All of the plan documents were similarly
18 negotiated between the debtor and the committee.

19 Q. That's the unsecured creditors committee?

20 A. That's correct.

21 Q. Was the claimant trust agreement fully
22 negotiated before Farallon acquired its interest in the
23 claims?

24 MR. STANCIL: Objection to form.

25 A. Yes.

1 Q. (By Mr. McEntire) Was the claimant trust
2 agreement fully negotiated before Stonehill acquired its
3 interest in the claims?

4 MR. STANCIL: Objection to form.

5 A. I previously testified I don't really know
6 exactly when Stonehill acquired their claims.

7 Q. (By Mr. McEntire) All right. As the trustee,
8 you are the -- you are a trustee in terms of the
9 claimant trust agreement. That's correct, is it not?

10 A. I'm the claimant trustee, yes.

11 Q. And what -- what are your duties as the
12 claimant trustee? To whom do you owe fiduciary duties?

13 MR. MORRIS: Objection.

14 MR. STANCIL: Objection to form.

15 A. They're laid out in the claimant trust
16 agreement. I owe duties to the claimant trust in the
17 Class 8 and Class 9 beneficiaries.

18 Q. (By Mr. McEntire) Is it your position under
19 pertinent law that you owe no duties at all to Class 10?

20 MR. STANCIL: Objection to form.

21 MR. MORRIS: Objection to the form of the
22 question.

23 A. I think my duties are delineated -- delineated
24 by the -- and limited by the claimant trust agreement.
25 And if you're not a claimant trust beneficiary

1 currently, I don't owe any duties to you.

2 Q. (By Mr. McEntire) In connection with your
3 involvement as the trustee, have you undertaken any
4 effort to evaluate what Class 10's rights are under
5 Delaware trust law?

6 MR. STANCIL: Objection to form and calls
7 for --

8 MR. MORRIS: Objection to the form of the
9 question. And I'm going to direct him not to answer to
10 the extent that it involves legal advice.

11 MR. MCENTIRE: I'm not soliciting or asking
12 a question. I'm asking whether he personally has
13 undertaken the effort. I'm not asking for any advice
14 received from any lawyer.

15 Q. (By Mr. McEntire) My question stands,
16 Mr. Seery. Have you undertaken any effort to -- to find
17 what duties a trustee may owe under Delaware trust law?

18 MR. MORRIS: You can answer yes or no.

19 MR. STANCIL: Same objection. With
20 respect -- you used the word "any," Mr. McEntire. And
21 it's a legal question. So I don't think he can answer
22 your question.

23 MR. MCENTIRE: Well, let's see if he can.
24 Let's see if he can.

25 MR. STANCIL: Well, I'm directing him not

1 to answer what he may or may not have asked a lawyer.

2 MR. MCENTIRE: I -- but I've made it very
3 clear, Mr. Stancil, that I'm not asking him what he has
4 discussed with other lawyers, okay, or his lawyers. I'm
5 asking him whether you have undertaken any effort
6 personally to determine what your duties are under
7 Delaware trust law.

8 MR. STANCIL: All right. Mr. McEntire, may
9 I suggest you clarify your question to say other than
10 communications with lawyers. And then --

11 MR. MCENTIRE: I just did.

12 MR. STANCIL: And then --

13 MR. MCENTIRE: Well, you're --

14 MR. STANCIL: Okay. Then say it -- then
15 say it correctly. And maybe we can let him answer it.

16 MR. MCENTIRE: You know, Mr. Stancil, I'm
17 not going to take instructions on how to correctly
18 phrase a question because my question was perfectly
19 correct. I'm going to try it one more time.

20 Q. (By Mr. McEntire) Mr. Seery, did you personally
21 undertake any effort to evaluate what your duties were
22 as a trustee and continue to be as a trustee to
23 Class 10, setting aside any discussions you've had with
24 your lawyers?

25 A. I personally have taken numerous efforts with

1 my lawyers. I have not done any independent research on
2 my own, gone to Delaware case law or gone to the
3 Delaware codes and looked up what might be pertinent
4 with respect to this trust and its responsibilities.

5 Q. You have -- you have personally done that
6 research?

7 A. I said I did not.

8 Q. Okay. So sitting here today and setting aside
9 any conversations you may have had with your attorneys,
10 you do not know what the duties may be under Delaware
11 trust law; is that correct?

12 MR. MORRIS: Objection to the --

13 MR. STANCIL: Objection to form.

14 MR. MORRIS: -- form of the question.

15 A. It's not correct.

16 Q. (By Mr. McEntire) All right. Setting aside any
17 discussions you've had with your lawyers, what is your
18 understanding of what duties you may have to Class 10
19 under Delaware trust law?

20 MR. MORRIS: Objection --

21 MR. STANCIL: Objection.

22 MR. MORRIS: -- to the form of the
23 question.

24 MR. STANCIL: Instruct -- go ahead, John.

25 Well, I instruct the witness not to answer.

1 MR. MORRIS: Instruct him not to answer
2 unless he has an independent basis to answer. Unless he
3 has a basis for answering other than the advice he's
4 received, he's welcome to answer the question.

5 MR. MCENTIRE: I think I made that clear.
6 We were already at that point.

7 Q. (By Mr. McEntire) Do you have --

8 MR. STANCIL: Mr. McEntire, you're asking
9 him for legal answers on which he is telling you he's
10 received legal advice. So I don't know how he can
11 separate --

12 MR. MORRIS: And has done no independent
13 research.

14 Q. (By Mr. McEntire) Let's try it this way.
15 Setting aside any understandings you've acquired from
16 your lawyers, your bevy and covey of lawyers, do you
17 know what your duties are under Delaware trust law to
18 Class 10?

19 MR. MORRIS: I move to strike the reference
20 to "bevy of lawyers."

21 MR. STANCIL: Mr. Seery, I instruct you not
22 to answer what your understanding is of a legal question
23 because I don't believe you can do it without disclosing
24 privileged information.

25 Q. (By Mr. McEntire) You're going to follow your

1 lawyer's advice, right?

2 A. Yes.

3 Q. Sitting here today, can you tell me whether or
4 not Farallon did any due diligence at all in connection
5 with this investment in the claims at issue?

6 A. I have an indication they did, yes.

7 Q. What is your indication and how did you get it?

8 A. In -- in June of 2020, I got an e-mail from
9 Mr. Linn that said that he and his associate had been
10 following the case and just congratulating me on getting
11 appointed as the independent trustee -- or independent
12 director. I'm sorry.

13 Q. So you got an e-mail from Mr. Linn in June of
14 2020 after you had been appointed? Is it June 2020 or
15 June '21?

16 A. June 2020.

17 Q. You got an e-mail from Mr. Linn in June of 2020
18 congratulating you on your appointment as the CEO?

19 MR. MORRIS: Objection to the form of the
20 question.

21 Q. (By Mr. McEntire) I couldn't hear your answer
22 because they're -- they're talking so much. What did
23 you say, Mr. Seery?

24 MR. MORRIS: You're not listening very
25 much.

1 MR. MCENTIRE: I'm trying to.

2 MR. MORRIS: Then have the answer read
3 back.

4 Q. (By Mr. McEntire) Let's try it this way. You
5 got an e-mail in June of 2020 from Mr. Linn. What did
6 it state?

7 A. It congratulated me on my appointment as an
8 independent board member or director at Highland and
9 indicated that Mr. Linn had been following -- Mr. Linn
10 and his associate had been following the case.

11 Q. Fair enough.

12 Other than an indication that they had been
13 following the case, are you aware of any other due
14 diligence that Farallon did in connection with this
15 investment and these claims?

16 A. No, I'm not. I didn't speak with them
17 between -- or have any correspondence with them between
18 June of 2020 and the previously described e-mail in
19 January, mid-January of 2021.

20 Q. Fair enough.

21 Do you have any knowledge as to whether or
22 not Stonehill did any due diligence in connection with
23 this investment and these claims?

24 A. I have no knowledge about their -- what
25 diligence they did with respect to their investment and

1 the claims, no.

2 Q. When is the last time you -- you have talked
3 with either Michael Linn or Raj Patel?

4 MR. STANCIL: Objection. To the extent
5 this calls for a description of common interest
6 discussions, I would instruct the witness not to answer.

7 MR. MCENTIRE: I simply asked him a date,
8 when is the last time. I didn't ask him the substance,
9 Mr. Stancil.

10 Q. (By Mr. McEntire) When is the last --

11 MR. STANCIL: Excuse me. Excuse me,
12 Mr. McEntire. I'll respond.

13 I'm instructing the witness not to -- not
14 to answer with the content of any joint interest
15 communications.

16 MR. MCENTIRE: I'm not asking him for the
17 contents. I'm asking him when did he last talk with
18 either Mr. Linn or Mr. Patel, the date or the time or
19 month.

20 A. I speak to Mr. Linn virtually every week on a
21 board call. We have an oversight board call, if not
22 every week, every other week now.

23 And the last time I spoke to Mr. Patel,
24 that I recall, would probably have been in 2019. I
25 don't -- I don't recall. I don't speak to him very

1 often.

2 Q. (By Mr. McEntire) When is the last time you
3 talked to a representative of Stonehill in connection
4 with this bankruptcy?

5 A. If we consider this bankruptcy the oversight
6 board, which, for your purposes, I'll -- that's the way
7 I'm taking the question, a representative of Stonehill
8 is also on the oversight board calls every week or every
9 other week. We -- we have done them every week. And
10 now we're more like every other week.

11 Q. And who is that?

12 A. The representative on the -- for Muck -- for
13 Jessup is a gentleman named Chris Provost. But we're
14 usually joined by Mr. Stern as well.

15 Q. What is your understanding of Jessup, the
16 entity? Is that a special-purpose entity?

17 A. Just a -- just an SPE that holds -- my -- my --
18 I don't really know. My only understanding is it holds
19 the interest in the claimant trust.

20 Q. All right. Do you know anything about its
21 corporate structure in terms of who the members are?

22 A. Nothing other than I believe it to be
23 controlled and owned fully by Stonehill. That's my
24 belief. I don't --

25 Q. Fair enough.

1 And is it your belief that Muck is also a
2 special-purpose entity?

3 A. Yes.

4 Q. And that, to your understanding or belief, it's
5 also wholly owned or controlled by Farallon?

6 A. Taking the word "also" out, I believe it --
7 Stonehill -- I think they have two separate entities.
8 My belief is they are special-purpose entities that hold
9 the claims that then became the interest in the trust.
10 And that each -- or one is owned by Farallon, and one is
11 owned by Stonehill.

12 Q. Jessup, you understand, is owned by Stonehill,
13 and Muck is owned by Farallon?

14 A. That's correct.

15 Q. Are you familiar with a -- a charity known as
16 Rubicon Team?

17 A. That's not the name of it. It's called Team
18 Rubicon. Yes.

19 Q. I apologize. Team Rubicon. What is -- what
20 type of charity is that?

21 A. It's a veteran-led organization that deploys
22 veterans to disasters around the country and the world
23 to help service the communities that those -- those
24 disasters occur in, focused mainly in the United States
25 but does it globally as well.

1 Q. Are you involved in that charity?

2 A. I am, yes.

3 Q. What is your role?

4 A. I -- I'm just an active member. And I -- I
5 participate in the fundraising gala every year.

6 Q. All right. And you serve on the host
7 committee?

8 A. Yes.

9 Q. Is Stonehill connected with that charity?

10 A. I don't know what you mean "connected with" by.

11 Q. Has it been involved in raising funds or
12 underwriting various events for that charity?

13 A. Not to my knowledge.

14 Q. You said you don't know what I mean "connected
15 with." Does Stonehill have any involvement at all, to
16 your knowledge, with that charity?

17 A. I believe they made a contribution.

18 Q. And when was that contribution?

19 A. I believe they made it in connection with last
20 year's gala.

21 Q. How much did they contribute?

22 A. I don't recall. I think it may have -- I don't
23 recall. I think it may have been \$10,000, but I don't
24 recall.

25 Q. Did Farallon make a similar contribution?

1 A. I don't recall if Farallon made it or Mr. Linn
2 made it on his own. But I believe they made a
3 contribution as well. I -- I should be better versed in
4 that. I just don't recall.

5 I should add that there's tens of thousands
6 of people who make contributions to Team Rubicon.

7 Q. I'm sure there are. I'm not -- I'm not
8 debating that. I simply was asking questions about
9 Farallon and Stonehill, though.

10 Are you involved in any other charities in
11 which either Farallon or Stonehill have also been
12 contributors?

13 A. No, I'm not.

14 Q. And how long have you been involved with Team
15 Rubicon?

16 A. I think I've been involved at least five,
17 seven years.

18 Q. And has Farallon made -- or Mr. Linn, rather,
19 has he made a contribution on more than one occasion?

20 A. I don't recall specifically whether they --
21 whether it's Farallon or Mr. Linn. And I don't recall
22 whether it's one year or more than one year.

23 Q. Same question with regard to Stonehill. Do you
24 recall whether Stonehill has been a contributor for --
25 on more than one occasion?

1 A. I -- I -- I don't recall. I -- if -- I wish
2 they had. I wish I could recall. But it would be
3 really nice if they have and they continue to do so.
4 Hopefully your worthless inquiry in this method won't
5 dissuade people from contributing to a fantastic
6 charitable organization.

7 Q. I'm sure it is.

8 A. No, you're not.

9 MR. MCENTIRE: Tim, would you put up the
10 memorandum of agreement. In our tab, it's Tab 10.

11 THE WITNESS: That's just downright
12 despicable. It's the best. It's the best.

13 Q. (By Mr. McEntire) All right. This was attached
14 as Exhibit 41, Mr. Seery, to the joint opposition that
15 was filed by, I believe, your lawyer and Mr. Morris in
16 connection with these proceedings. You're familiar with
17 this document, are you not?

18 A. Can I see the whole thing, please?

19 Q. Sure.

20 A. Yes, I'm familiar with the document.

21 MR. MCENTIRE: All right. Let's go back to
22 the first page -- or the second page, Tim, please.

23 Scroll down a little bit. I want to look
24 at the signature lines, please.

25 Q. (By Mr. McEntire) Do you know what

1 Mr. Christopher Provost's actual position is with Jessup
2 Holdings?

3 A. He's the representative on the board. I don't
4 know that he has a position or not.

5 Q. Do you know what Michael Linn's position is
6 with Muck Holdings?

7 A. He's the representative on the board. I don't
8 know if he has a position at Muck Holdings or not.

9 Q. Is Mr. Linn also -- excuse me. Is Mr. Patel
10 ever involved in the oversight board?

11 A. No.

12 Q. Mr. Stern from Stonehill?

13 A. He participates in the -- in the -- in the
14 calls, yes.

15 Q. Okay. Anybody else from Farallon participate
16 in the calls, other than Mr. Linn?

17 A. A woman named Sofia Jia.

18 Q. Gia, G-I-A?

19 A. J-I-A.

20 Q. J-I-A. You understand she's from Farallon's
21 offices in San Francisco?

22 A. She works out of those offices, yes.

23 MR. MCENTIRE: All right. Go back to the
24 top of the page, please, Tim.

25 Q. (By Mr. McEntire) I want to read the first

1 line. "In accordance with the provisions of the
2 Highland Claimant Trust Agreement and the Highland
3 Capital Management Plan of Reorganization, the oversight
4 board of the Highland Claimant Trust and the claimant
5 trustee/chief executive officer of HCMLP engaged in
6 robust, arm's-length and good faith negotiations ..."

7 Have I read that correctly?

8 A. I believe so, yes.

9 Q. You are the claimant trustee and chief
10 executive officer referred to here, correct?

11 A. That is correct.

12 Q. Who did you specifically deal with in these
13 robust, arm's-length and good faith negotiations? What
14 are the names of the individuals?

15 A. The -- each of the members of the independent
16 board. So it would be Mr. Katz, Mr. Linn, Mr. Provost.

17 Q. And were there proposals that went back and
18 forth?

19 A. Yes.

20 Q. How many proposals went back and forth?

21 A. My recollection is approximately four or five
22 rounds of back-and-forths.

23 Q. Did you have any -- I'm sorry. Were you
24 finished?

25 A. Probably somewhere in that -- in that

1 neighborhood. Probably four to five.

2 Q. Did you represent yourself?

3 MR. MORRIS: Objection to the form of the
4 question.

5 A. I -- representing is -- is an odd word. I
6 acted for myself, yes.

7 Q. (By Mr. McEntire) Fair enough.

8 And did -- did Mr. Linn or Mr. Provost, did
9 they have any type of attorney representation or did
10 they handle it themselves?

11 A. To my knowledge, they -- they addressed the
12 issues themselves.

13 Q. Fair enough.

14 Where are these four -- roughly four
15 proposals that went back and forth? Where are they
16 located today?

17 A. I suppose they would be in e-mail form between
18 various parties. I believe they're summarized in this
19 agreement, to some degree, at the bottom.

20 Q. Well, if there are proposals, that means that
21 not all the terms were accepted and some of the terms
22 may have been rejected if they went back four times. So
23 I'm wondering where are the various iterations
24 preserved? Are they on e-mail strings?

25 A. They would be --

1 MR. STANCIL: Objection to form.

2 A. They would -- they would be on -- they would be
3 in e-mail form, yes.

4 Q. (By Mr. McEntire) And are those e-mails
5 strings -- were you using your Highland Capital e-mail
6 address?

7 MR. STANCIL: Objection.

8 A. Typically I would have used my Gmail address.

9 Q. (By Mr. Stancil) Your Gmail address, that's
10 your personal address?

11 A. Yes.

12 Q. Okay. By the way, the text messages that you
13 may have been involved in back in 2021 with -- with
14 Stonehill, was that on your personal phone?

15 A. I wasn't involved in any text messages in 2021
16 with Stonehill.

17 Q. I thought you said you were involved in a
18 February 2021 text message with Mr. Stern that followed
19 up with an e-mail?

20 A. Oh, I'm sorry. And in 2021, yes, there was a
21 text message. And, yes, that would have been on my
22 phone, my personal phone.

23 Q. What was the telephone number of that phone?

24 A. My telephone number?

25 Q. Yes.

1 A. It's at the top of the résumé you put at the
2 start.

3 Q. Fair enough. And is that the same phone you
4 have today?

5 A. It is.

6 You're not authorized to call me.

7 Q. Looking back at the -- the agreement, did you
8 have any meetings as part of this robust, arm's-length
9 negotiation or was it all via e-mail?

10 MR. STANCIL: Objection to form.

11 A. We had meetings, yes.

12 Q. (By Mr. McEntire) How many meetings did you
13 have?

14 A. It would have been -- my recollection is -- is
15 meetings with respect to each proposal back and forth.
16 It wasn't just trading e-mails.

17 Q. How many meetings did you have?

18 A. There were, I think, four or five rounds. So
19 there would have been at least four or five meetings to
20 discuss, with various members, the back-and-forth.

21 Q. Were these personal meetings or virtual
22 meetings?

23 A. I'm sorry. I didn't understand your question.

24 Q. Were these personal meetings or virtual
25 meetings?

1 A. These -- these probably were all by phone or on
2 videoconference.

3 Q. Okay. This document doesn't identify any of
4 the proposals that were rejected. Other than these
5 e-mail strings, is there any way else to identify
6 specific proposals that were rejected?

7 MR. STANCIL: Objection to form.

8 A. I don't think your premise is correct.

9 Q. (By Mr. McEntire) Then tell me why my premise
10 is incorrect.

11 A. I believe there's a summary at the bottom that
12 shows at least some of the back-and-forth. It does not
13 show all of it, but it shows some of it.

14 MR. MCENTIRE: Tim, why don't you skim
15 down.

16 Q. (By Mr. McEntire) Tell me where -- what you're
17 suggesting is the -- the --

18 MR. MCENTIRE: Scroll slower.

19 Q. (By Mr. McEntire) Is this what you're referring
20 to?

21 A. Yes.

22 Q. Okay. So we -- we have the summary of
23 Proposal 1, summary of Proposal -- it's difficult for me
24 to read.

25 MR. MCENTIRE: Can you highlight that, make

1 it zoom in?

2 Q. (By Mr. McEntire) Can you see it, Mr. Seery?

3 A. Yes.

4 Q. Okay. So for instance, that would be your
5 first proposal, their -- their proposal back. Are
6 you-all simply negotiating percentages and tiers?

7 A. No.

8 Q. Well, what were the nature of the discussions
9 then?

10 A. They were about the -- both the amount and the
11 structure of the compensation plan, so each of the
12 iterations amount was part of it. That's part of the
13 metrics. That's easier to capture in Excel. And then
14 the form and structure were -- were verbal and contained
15 in either e-mails or verbal discussions.

16 Q. Seery Proposal No. 1, when was it -- when would
17 it have been presented?

18 A. I believe it was August of 2021.

19 Q. Did any of these conversations take place
20 before the effective date?

21 A. No.

22 Q. Do you have a calendar or some way that you
23 could confirm when the meetings occurred?

24 A. If it was a meeting that was calendared, I
25 could. If it was a call, then it wouldn't be on the

1 calendar.

2 Q. Whose idea was it to develop a bonus
3 participation based upon the recovery for the various
4 classes of creditors?

5 A. The initial proposal came from the structure of
6 the claimant trust agreement and the plan which
7 conditioned a success fit. My -- my initial ask was
8 that it be based on recoveries because that's how I
9 viewed success in the context of a monetization plan
10 that sought to maximize values.

11 Q. So can you just walk -- walk us through your
12 proposal on how -- your Seery Proposal No. 1 and explain
13 to me how it would work?

14 A. My proposal -- my initial proposal was that
15 there would be a entire bonus pool, that it would be
16 based upon recoveries, very little just to meet the plan
17 expectation of 71-and-change cents and then graduated
18 but more evenly between the plan projection and amounts
19 above the plan projection. My proposal was to basically
20 have a total pool that I would control. And then to the
21 extent that I determined performance, I would allocate
22 it to myself and to various members of the team.

23 Q. The various members of the team are the portion
24 on the right that's redacted?

25 A. That's correct.

1 Q. Okay. So we can -- can I safely assume that
2 all the redactions are limited just to members of your
3 teams?

4 A. That's correct.

5 MR. MORRIS: I'll make that representation
6 to you so that it's really clear. Yes.

7 Q. (By Mr. McEntire) Going back to -- you used the
8 term "the plan projection." That's the 71 percent
9 recovery rate for Class 8 claims?

10 A. The -- the actual projection was 71 -- near 71
11 and a half, 71.32.

12 Q. So when -- just to be clear, when -- when
13 Farallon invested in the claims in the -- in the spring
14 of 2021, the only information provided at that time by
15 Highland Capital was that there was a projected
16 71 percent recovery for Class 8, correct?

17 MR. STANCIL: Objection to form.

18 A. That's far from the only information that was
19 provided. That was the projected recovery in the plan.
20 And the projections are next to the plan that would pay
21 that 71-and-change over a two-year period, excluding
22 litigation against the debt (inaudible).

23 Q. (By Mr. McEntire) Okay. And -- and from the
24 time of that projection, at the time of the plan in
25 February 2021, that remained the same projection up and

1 through the effective date, correct?

2 MR. STANCIL: Objection to form.

3 A. Once the plan was confirmed, we didn't amend
4 our -- our projections that were on file. That --
5 that -- we did not.

6 Q. (By Mr. McEntire) All right. So, basically, if
7 I understood you correctly, if you simply met the
8 expectations of the plan, your participation would be
9 lower; is that correct?

10 A. It was --

11 MR. STANCIL: Objection to form.

12 A. Yeah. I think that's correct. It would be --
13 it would be -- it would be pretty small at best.

14 Q. (By Mr. McEntire) You said small. Okay. Why
15 would it increase if you exceeded those expectations?

16 A. The idea was to structure a success fee, which
17 was, I believe, how it was defined in the plan. And
18 success was going to be measured on not just meeting
19 plan expectations but exceeding plan expectations. And
20 so to incentivize myself and the team to not just meet
21 the plan but really try to maximize value, the plan
22 would be structured with additional compensation the
23 more success I and the team had.

24 Q. So the idea here is the more certain the
25 recovery, the lower the participation was; the greater

1 the uncertainty, the greater the participation bonus; is
2 that fair?

3 MR. MORRIS: Objection.

4 MR. STANCIL: Objection to form.

5 A. I don't think certainty is the way to think
6 about these concepts.

7 Q. (By Mr. McEntire) Well, in February of 2021,
8 you were projecting zero recovery for Class 9, correct?

9 MR. STANCIL: Objection to form.

10 A. That -- that's correct.

11 Q. (By Mr. McEntire) And if you achieved Class 9
12 recoveries, your -- your participation fee would be
13 significantly higher, correct?

14 A. I don't -- I don't understand what you mean by
15 participation fee. But the bonus structure was set up
16 that if you exceeded Class 8 projection, then more bonus
17 would be earned. If you -- the more you exceeded it,
18 the more bonus would be earned. And if you got into
19 Class 9, there would be even more bonus sent.

20 Q. Why -- why would you -- other than
21 incentivizing, why would you get more and more as -- as
22 the recoveries increased?

23 MR. STANCIL: Objection to form.

24 A. It indicates -- other than -- incentivizing is
25 one. But it indicates better performance.

1 Q. (By Mr. McEntire) Why?

2 A. Because the recoveries are increased.

3 Q. And better performance because those recoveries
4 are less certain than what the plan was projecting in
5 February of 2021?

6 MR. STANCIL: Objection to form.

7 A. Again, I don't -- I don't accept your
8 certain/not certain distinction. I just don't think it
9 makes any sense. The better the performance, the effort
10 and the successful effort gets rewarded higher.

11 Q. (By Mr. McEntire) Well, when you negotiated
12 and -- and presented Seery Proposal No. 1, did you have
13 an expectation at that time in August of 2021 that you
14 would recover Class 9 -- you would have recovery in
15 Class 9?

16 MR. STANCIL: Objection.

17 A. I don't believe we did. We really thought we
18 wouldn't have any recovery into Class 9 except for the
19 potential of litigation.

20 And you'll recall, by that time, we had
21 discovered the Sentinel fraud and the damages that --
22 that Dondero and other entities had caused to -- to the
23 estate through that and other frauds, you know,
24 involving north of 100 to 300 million dollars worth of
25 assets. And that indicated that there may be some

1 recovery, but it was going to be hard to achieve.

2 MR. MCENTIRE: Hard to achieve.

3 Object as nonresponsive, by the way.

4 Q. (By Mr. McEntire) So they responded back to
5 you. And what was their counterproposal? "They" being
6 the oversight board.

7 A. They -- their response back was, one, we think
8 the amount has to be much lower. Two, it has to be
9 structured in a way that it makes it even more graduated
10 than -- than I had set it up. And, three, they didn't
11 like the structure that it's a single bonus pool and I
12 get to allocate it. They wanted to have it broken
13 between me and the team, and that they had a lot more
14 control over both the distributions and the team.
15 Understanding that I will be managing the team. But
16 that they wanted a say into who -- how any bonus pool
17 was allocated.

18 And also with respect to me, that it was
19 clear that mine was determined by them. And they wanted
20 to add a number of other control factors to assure
21 performance not just related to recoveries, which was my
22 focus, but predominantly related to recoveries but also
23 other metrics.

24 Q. Mr. Seery, looking at your Seery Proposal
25 No. 1, I don't see any percentages identified. I do see

1 them in the oversight board response to you. Is this
2 something that you had communicated to them verbally?

3 A. No, no. We had -- we had -- we had
4 percentages. And my recollection is I had percentages
5 and tiers, not -- I don't know why it's not in this
6 setup. I think it's a -- it was a total pool, and it
7 was a much higher number.

8 Q. Did you ever consider any type of success fee
9 in the event that you actually returned a recovery for
10 Class 10, an amount?

11 A. I don't believe that we did. I don't believe
12 so.

13 Q. Was there a conscious decision that was made in
14 your discussions with the oversight board that that
15 would not be included?

16 A. I don't believe so. I think it was that we
17 didn't think that we were going to get into Class 10.
18 And so there was no need to go there in terms of
19 allocating, you know, any bonus for that amount. And
20 the representatives on the board, at least the Muck and
21 the Jessup, were Class 8 and 9.

22 Q. Do you have any communications from either Muck
23 or Jessup suggesting that they were aware you would
24 never reach recoveries for Class 9?

25 MR. STANCIL: Objection to the extent it

1 calls for discussions -- I'm sorry, John. Go ahead.

2 MR. MORRIS: I'm just objecting to the form
3 of the question.

4 MR. STANCIL: I would -- I would just
5 remind Mr. Seery to not disclose any discussions, not
6 disclose discussions post effective date that may
7 contain legal advice.

8 MR. MCENTIRE: Well, I thought -- I'm not
9 asking about legal advice. I'm talking about
10 discussions about the negotiations, the robust
11 negotiations of this agreement as --

12 MR. STANCIL: Mr. -- Mr. McEntire, if
13 you're -- if you're asking about the compensation
14 agreement, I'm not going to object. I just wanted to
15 make sure. I think you had said any questions regarding
16 Class 10 recoveries. And that's a -- that's a broader
17 question.

18 Q. (By Mr. McEntire) Mr. Seery, in connection with
19 your negotiation of the agreement that's on the screen,
20 did you have any conversations with Muck that they
21 didn't -- did not expect that Class 9 would ever be
22 reached?

23 A. Class 9, I don't recall. I think we certainly
24 hoped that we would be able to get into Class 9. And we
25 had -- we had litigation and potential contingent

1 benefits. But I don't -- I don't recall at this time --
2 this was -- at the beginning, this was very early. So I
3 don't know what -- what's out there in terms of Class 9.

4 Q. Well, I'm not asking what you -- I'm asking
5 whether -- did they ever express an opinion or concern
6 that Class 9 would never be reached?

7 A. Not -- not that I -- I recall them ever
8 expressing that it wouldn't be reached. Again, there
9 was always potential upside to plan values. And there
10 was a massive and well-founded litigation that could
11 provide benefits above the plan projections.

12 Q. Same question for Jessup. Same answer?

13 A. Yes.

14 Q. Did -- did Muck ever express a concern that
15 they would never exceed plan projections on Class 8?

16 MR. STANCIL: Objection to the form.

17 A. That they would never -- I -- I don't recall
18 any discussions about whether --

19 Q. (By Mr. McEntire) Same question -- same
20 question --

21 MR. MORRIS: Let him finish.

22 A. They were certainly focused on -- no, I
23 don't -- they didn't have a discussion with Muck about
24 that. I think Jessup was focused a lot on 8. But they
25 both were.

1 Q. (By Mr. McEntire) So nothing that you recall
2 with Muck, but you do recall something with Jessup?

3 A. No. I recall them both being focused on
4 maximizing value and trying to get not only just to
5 71 cents but anything that could be recovered above that
6 to get as far into the 8 as we could and then
7 potentially into the 9.

8 Q. Fair enough. My question is a little bit
9 different. Maybe -- maybe it's subtle, but it's a
10 little bit different.

11 My question is do you specifically recall
12 any expressions of concern by Muck that you would never
13 get a payout on Class 8 over and above plan projections?

14 A. Not of concern, no.

15 Q. Same question with regard to Jessup. Same
16 answer?

17 A. Not -- nothing I can recall specifically, no.

18 MR. MCENTIRE: Tim, can you go -- scroll
19 back up to Page 2 or Page 3 of the -- of the document.

20 Page 2, substantive page. Right there. Go
21 back.

22 Q. (By Mr. McEntire) The redacted portion under
23 Section 1(b), that's all dealing with members of your
24 team?

25 A. That's correct.

1 Q. In connection with this agreement --

2 MR. MCENTIRE: Go back to Page 1, please.
3 Go back. Yeah, keep going. Stop.

4 Q. (By Mr. McEntire) The robust, arm's-length and
5 good faith negotiations, did Muck ever tell you during
6 these negotiations that it -- it had investigated the
7 market to determine what would be fair compensation for
8 you as a trustee and chief executive officer of the
9 reorganized debtor?

10 A. I don't recall any such statements from Muck.

11 Q. Same question with regard to Jessup. Same
12 answer?

13 A. Yeah. I don't recall any specific statement.

14 Q. Are you aware that Muck conducted any type of
15 market research or due diligence before, in the process
16 of negotiate -- negotiating this agreement?

17 A. I'm not aware that they did any market
18 research, no.

19 Q. Same question with regard to Jessup.

20 A. I'm not aware of any market research that
21 Jessup did, no.

22 Q. Now, the same question, when I use "Muck," I
23 also want to -- for purposes of my question, Farallon.
24 Did Farallon ever advise you that they had done market
25 research?

1 A. Not that I recall, no.

2 Q. Same question with regard to Jessup. Same
3 answer? I mean -- excuse me -- same -- same question
4 with regard to Stonehill. Same answer?

5 A. Not that I recall, no.

6 MR. MCENTIRE: All right. If you can go
7 back to -- to Page 3, substantive Page 3.

8 Mr. Seery, we've been going almost two
9 hours. I'm going to finish this line of questioning.
10 And we'll take a little bit of a break.

11 Q. (By Mr. McEntire) Just so I understand, Tier 1,
12 2 -- Tier 2, Tier 3, Tier 4, Tier 5, they all deal with
13 recoveries for Class 8 and Class 9, correct?

14 A. That's correct. They're listed above.

15 Q. So if you -- if you hit a home run on Class 9,
16 you're going to get 6 percent?

17 A. It's incremental.

18 Q. I understand. Well, maybe I don't. When you
19 say "it's incremental," what do you mean by that?

20 A. Each tier, the percentage applies to the -- to
21 the amounts in the tier.

22 MR. MCENTIRE: I see.

23 So go back to the previous page.

24 Q. (By Mr. McEntire) So --

25 MR. MCENTIRE: Stop.

1 Q. (By Mr. McEntire) So here, for instance, if you
2 get Tier 3, if you get a recovery for Class 8 between 90
3 and 103 percent, you've outperformed planned
4 projections, agree?

5 A. Correct.

6 Q. You're going to get --

7 MR. MCENTIRE: Let's go back to the next
8 page.

9 Q. (By Mr. McEntire) You're going to get
10 2.75 percent, correct?

11 A. That's not correct.

12 Q. What do you get?

13 A. Well, the first -- there's nothing below, I
14 believe, the -- anything below Tier 1. So there
15 wouldn't be any compensation, any bonus compensation. I
16 think there was -- whatever the number was. So then
17 there's .72 of that amount.

18 And then between whatever those numbers
19 are, 210 and 250, there would be 1.17 percent of that
20 increment. Then between 250 and 300, it would be 1. --
21 or 2.75 up that increment amount.

22 Q. All right.

23 A. They add up. And if -- and that's outlined in
24 the --

25 Q. All right. Fair enough. Make sure I

1 understand. You would add these up on an incremental
2 basis, correct?

3 A. They -- yes. So the first --

4 Q. You would take .72 of Tier 1. You would add
5 that to 1.17 if you completed Tier 2. And you would add
6 to that 2.75 percent recovery if you also successfully
7 achieved the completed Tier 3?

8 A. The numbers are outlined on the attachment. So
9 I don't think you have it correct. Each tier is its own
10 tier. So if you get 200 million, it's .72 times the
11 200 million, percent.

12 Q. Yeah. I understand, sir. I want to make sure
13 that --

14 A. I'm still -- I'm still trying to help you out
15 here, so let me finish.

16 Q. I need -- I need all the help I can get.

17 A. Then between -- in the next tier, it will be
18 50 million, approximately. Just pulling numbers out of
19 the air. It would be 1.17 percent of that. So that
20 would be, in my example, 1.3 million in the first. And
21 it would be approximately \$500- or \$600,000 in the
22 second. And if you hit the third, it's 2.75 of that
23 percentage. And those are what you're aggregating.

24 Q. So I apologize. But I'm not -- I'm not
25 arithmetically inclined. Do we add them up, or does one

1 supercede the previous tier?

2 A. They get added up. So it's -- in the first
3 tier -- let's just use round numbers. 200 million times
4 .72 percent, \$1.4 million approximately. I'm just
5 pulling numbers up. That's not the actual numbers.

6 And then in the next tier, if it were
7 50 million, it would be half a million. So that would
8 be 1.9 in the aggregate. And in the third tier, it's
9 another, just say, 50 million times 2.75. That would be
10 another million that would get added.

11 And at the end total, I think it could
12 possibly reach 8.3.

13 MR. MCENTIRE: Let me -- go to the --
14 scroll down there, Tim, please.

15 Q. (By Mr. McEntire) Under "Base Salary," are you
16 continuing to receive \$150,000 a month?

17 A. I am, yes.

18 Q. So since August of -- since August of 2021,
19 post effective date, you have continued to receive
20 \$150,000 a month for each -- each month since that date;
21 is that correct?

22 A. That's correct.

23 Q. There's been no downward adjustment?

24 A. There has not, no.

25 Q. Romanette ii suggests that there would be a

1 downward adjustment. Why was there not a downward
2 adjustment?

3 A. The amount of effort was the -- the focus of
4 the effort, the full-time nature of it, because it
5 included a provision that we would continue to negotiate
6 in good faith to see what makes sense, the amount of
7 time, effort, expertise to accomplish it, we
8 renegotiated. And the board continued the 150.

9 Q. The -- then you have a \$1 million severance.
10 In the event that you are severed or resign your
11 positions or terminated, you get a \$1 million severance?

12 A. That's correct.

13 Q. With or without cause if you're terminated?

14 A. I believe it's without cause. That's what it
15 says.

16 Q. It does. You are correct.

17 MR. MCENTIRE: Tim, if you could go to the
18 next page, please.

19 Q. (By Mr. McEntire) Subsection 2(d) says that you
20 have the right to shift any portion of your bonus
21 success fee to your team members. Have you done that?

22 A. No. It would -- it would really depend on
23 where we are at the end of the matter or where -- where
24 we think performance has been and whether -- whether we
25 determine that -- that it's -- it's enough. It was

1 really something that I put in from the original
2 structure where I wanted the full pool to me and then I
3 would get to allocate it. If there was, you know,
4 exemplary performance that I didn't think was covered by
5 the team portion, I would be permitted to allocate a
6 portion of mine to members of the team.

7 Q. But sitting here today, there's been no -- no
8 allocation back to the team members, correct?

9 A. Neither allocation nor payment.

10 Q. Subsection 2(g), the 20 percent of the claimant
11 trust ICP, incentive compensation payment, will be based
12 on the successful achievement of the following goals.
13 What does that 20 percent refer to?

14 A. The oversight board wanted a -- they wanted
15 more say over what I'll call softer performance metrics
16 than I wanted. So I thought and still think the better
17 way to do this is strictly by the numbers. That's
18 typically how -- if you think about performance in this
19 business and distribution to the beneficiaries. They
20 wanted a portion of the compensation to be subject to
21 review.

22 Q. They wanted a portion of it to be subject to
23 review?

24 A. Correct, with these metrics.

25 Q. So assuming that you had achieved the entirety

1 of Class 9 recovery, 20 percent of that -- of that bonus
2 payment that you would receive would be based upon the
3 metrics romanette i, ii, and iii under Paragraph 2(g)?

4 A. Could be, yes.

5 Q. Could they take it away from you?

6 A. I think the answer is potentially yes. But
7 I --

8 Q. Have they take -- have they taken any
9 payments -- by the way, let's back up. Have you
10 received any bonus payments or performance payments to
11 date?

12 A. No.

13 Q. All right. So all you've received are the
14 monthly payments?

15 A. That's correct.

16 Q. Since -- Mr. Seery, since this agreement was
17 negotiated, have you undertaken any market analysis of
18 what fair compensation would be for a trustee similar to
19 the position you're involved in?

20 MR. STANCIL: Objection to form.

21 A. I haven't done any market analysis of my own,
22 no.

23 Q. (By Mr. McEntire) To your knowledge, has Muck
24 or Jessup done any market analysis since this agreement
25 was negotiated?

1 MR. STANCIL: Objection to form.

2 A. I don't know if they have or they haven't.

3 Q. (By Mr. McEntire) Same question with regard to
4 Farallon and Stonehill.

5 MR. STANCIL: Same objection.

6 A. I don't know if either of them have.

7 MR. MCENTIRE: Fair enough.

8 We've been going about an hour and
9 55 minutes. I need to run down the hall. Would you
10 like to take about a ten-minute break? We'll come back
11 and -- and go one more -- one more run on this.

12 MR. MORRIS: Thank you very much.

13 MR. MCENTIRE: All right. Take a little
14 break.

15 THE VIDEOGRAPHER: The time is 12:29 p.m.
16 We're going off the video record.

17 (Break taken from 12:29 p.m. to 12:43 p.m.)

18 THE VIDEOGRAPHER: The time is 12:43 p.m.
19 We're back on the video record.

20 MR. MORRIS: Before we begin, I think there
21 are other people who have joined. Can -- can everybody
22 identify themselves for the record, please?

23 MR. MCENTIRE: Can we do that off the
24 record? You're using my time right now, Mr. Morris.

25 MR. MORRIS: We -- we won't start the

1 clock. But I -- I -- I just want the record to be
2 clear. Put it in the chat. I don't care. But I want
3 everybody's appear- -- anybody who is on this call
4 should be noted.

5 MR. MCENTIRE: I have no problem with that
6 at all. I would ask everybody to send their names to
7 the chat.

8 Q. (By Mr. McEntire) All right. Mr. Seery, we're
9 back on the record. I want to go back to your -- your
10 communications with Farallon and Stonehill in the spring
11 of 2021.

12 MR. STANCIL: Mr. McEntire, before --
13 before you leave, I just wanted to ask, did you mark
14 that exhibit that you were referring to? I want to make
15 sure that we know what number. I wrote Exhibit 3. But
16 my colleague does not recall.

17 MR. MCENTIRE: Fair enough. We're going
18 to -- we're going to identify the compensation
19 agreement, Exhibit 41 at the top, as Exhibit No. 3 to
20 this deposition.

21 (Exhibit 3 marked.)

22 MR. STANCIL: Thank you.

23 Q. (By Mr. McEntire) All right. Mr. Seery, going
24 back to -- to the January/February time frame in 2021,
25 did you ever provide -- let me back up.

1 Did Farallon ever ask you any questions
2 concerning the value of the claims?

3 A. In the e-mail of January 2021?

4 Q. Or in any other communication with you.

5 A. Certainly not in the e-mail of 2021 because
6 they didn't ask and I didn't respond to it. I don't
7 recall any other value of the claims. Subsequent to
8 them being on the claimant oversight board, we would
9 have had discussions around the value of the assets.

10 Q. Prior to the effective date, did you ever have
11 a conversation with Farallon concerning what you thought
12 would be the ultimate value of those claims that it
13 invested in?

14 A. Not in no conversation that I recall off the
15 top of my head, nothing.

16 Q. Well, you say that you recall. Are you saying
17 it didn't happen?

18 A. No. I said I don't recall one. They did sign
19 an NDA subsequent to their purchase of the claims. And
20 they did investigate the exit financing.

21 Q. Let me ask you a question about that.

22 A. I don't recall if there were discussions around
23 the claim values then because it would have been focused
24 around the returns to assure repayment of the loan.

25 Q. Did they ask you any questions -- you say you

1 don't recall. Again, are you saying that they never
2 asked you after the time they signed the NDA about the
3 value of the claims?

4 MR. STANCIL: Object to the form.

5 A. I think it's exactly what I just answered. I
6 don't recall any value of the claims discussions with
7 Farallon. I do know that they did sign an NDA after
8 they bought the claims in connection with the financing.
9 So there would have been discussions about assuring that
10 there was enough money to pay back the financing. I
11 don't believe -- I don't have any recollection that they
12 would have gone to what would be available for the
13 claims or ultimately the trust interests.

14 Q. (By Mr. McEntire) Did you provide any guidance
15 to Farallon before they bought the claims, invested in
16 the claims, concerning a recommendation of what the
17 claims may be worth?

18 MR. STANCIL: Objection to form.

19 A. No. I never spoke to, communicated with
20 Farallon before they bought their claims.

21 Q. (By Mr. McEntire) So if there's evidence in
22 this case that Farallon says they did have those
23 communications with you, their statement would be
24 untrue?

25 A. If there's evidence that --

1 MR. MORRIS: Objection, form.

2 A. If there's evidence that Farallon says that,
3 that would be untrue. If there's a statement from
4 anyone else that says that, that would also be untrue.

5 Q. (By Mr. McEntire) So -- so you provided no
6 recommendations or guidance to Farallon at any time
7 prior to their investment of the claims relating to
8 those claims; is that -- is that your -- is that your
9 position?

10 A. Yes.

11 MR. STANCIL: Object to the form.

12 Q. (By Mr. McEntire) Do you know whether anyone
13 else at Hunter -- excuse me -- at Highland Capital
14 provided any guidance to -- to Farallon in connection
15 with those purchase of those claims?

16 MR. STANCIL: Object to the form.

17 A. I'm sure that they didn't, as there were no
18 communications with Farallon prior to them acquiring
19 their claims.

20 Q. (By Mr. McEntire) So as you sit here today,
21 it's your testimony that no one at Highland Capital were
22 to provide any guidance or recommendations to Farallon
23 regarding those claims prior to the investment and
24 purchase of those claims; is that correct?

25 A. That's correct.

1 MR. STANCIL: Object to -- object to the
2 form.

3 Mr. Seery, please, given the Zoom, just
4 give me just half a beat, please, so the court reporter
5 can get us --

6 Q. (By Mr. McEntire) Same questions with regard to
7 Stonehill. Same answers?

8 MR. STANCIL: Object to the form.

9 A. There -- there were so many questions. But
10 I -- the answers are the same. I never gave them
11 recommendations or values or claim recoveries. If they
12 got information about asset values in connection with
13 the loan proposal that they made, it would have been
14 connection after they signed an NDA.

15 Q. (By Mr. McEntire) With regard to the -- the NDA
16 and the potential involvement in exit financing, you
17 told us that Farallon expressed -- basically said they
18 were not interested because they were not satisfied with
19 the rate of return. Is that -- was that -- am I
20 remembering correctly?

21 A. You are not.

22 Q. Tell me then what was basis of why they did not
23 want to be involved.

24 A. They -- they did their diligence. They did the
25 work. And they said to us, or said to me, that it's not

1 really what we do. The reason they were invited was
2 because they had an interest in claims. And because
3 it's not really what they do and their return did not
4 look attractive enough to them, they declined interest
5 unless they were going to be really (inaudible).

6 Q. Fair enough.

7 What was the -- the return -- the rate of
8 return that they were -- were hoping to get that they --
9 that they would not get? Do you know?

10 A. They didn't give me their rate of return.

11 Q. What was the interest rate that you were
12 suggesting as part of your exit financing?

13 A. I don't recall. We had requested
14 specifically -- my recollection is that we proposed in a
15 straw man, meaning Highland proposed in a straw man a
16 high single-digit return. And we ended up in below
17 double-digit return area.

18 Q. What -- I'm not sure I understand what you mean
19 by "straw man." Can you -- can you explain what you
20 just said?

21 A. What a straw man is?

22 Q. I'm not -- I don't understand your answer. You
23 said the interest rate that you were making available
24 for exit financing, you used the phrase "straw man." I
25 don't understand the -- the answer.

1 A. Very typical process that is run in connection
2 with financings. We analyzed, Highland, what we
3 thought, based on our analysis of the market, with the
4 assets we had and the lack of cash flow that we had,
5 what a loan of that type would look like and how it
6 would price. We put together a form term sheet often
7 referred to as a straw man. And that was part of the
8 package that respected lenders got. And they got to
9 take a look at that and then put in proposals based upon
10 their view of the market and the risks related to the
11 loan.

12 Q. And did -- and Farallon never put in a
13 proposal, correct?

14 A. That's correct.

15 Q. But Far- -- but Stonehill did?

16 A. Yes.

17 Q. And do you recall the -- what the -- the straw
18 man interest rate, do you recall what that was?

19 A. That's what I said earlier. I don't have a
20 specific recollection off the top of my head. I believe
21 it was high single digits all in return, maybe --
22 maybe -- maybe up to ten. But it was -- I think it was
23 high single digits, mid to high single digits.

24 Q. 7, 8 -- 7, 8, 9, 10 percent, in that area?

25 A. More of the north end of that -- that range.

1 Q. Okay. The north end.

2 All right. And did -- did -- did Stonehill
3 find that to be acceptable or did they counter?

4 MR. STANCIL: Objection to form.

5 A. Stonehill found it -- they countered the
6 proposal, did not just accept our terms, nor did any
7 other financier.

8 Q. (By Mr. McEntire) What -- what was Stonehill's
9 counter proposal on the -- on the -- on the interest
10 rate? What did they want?

11 A. I don't recall specifically. But they were
12 very close to the bid that was selected. They were just
13 a little behind.

14 Q. So maybe 11, 12 percent?

15 A. It depended on -- on when the loan was paid
16 back because the loan doesn't -- wouldn't cash flow. It
17 would be an asset loan that got paid down in chunks.
18 And each of the bidders put forth proposals that had
19 upfront fees, either upfront fees and a discount or an
20 exit fee. And so the all-in would have been in that low
21 double digits somewhere, depending on the timing,
22 between ten and --

23 Q. How high would it go up?

24 A. I wasn't -- I wasn't finished.

25 Q. I apologize. Go ahead.

1 A. Somewhere between 10, 11 percent and -- and
2 maybe up to 13 depending on when you paid it back. The
3 longer it went, the lower the return to the prospective
4 lender would be because they'd get the benefit of the
5 duration. And they wouldn't have to just recycle their
6 capital immediately. So it was somewhere in that range.
7 And they put forth a very competitive proposal. I just
8 don't recall what it was.

9 Q. And how -- you said the longer the term, the
10 lower the interest rate?

11 A. Not the interest rate. The all-in recovery to
12 the financier in terms of a percentage. The dollars
13 would go up. But the --

14 Q. Tell me what you mean by "all-in recovery."

15 A. I think I just explained that.

16 Q. Well, I'm asking for clarification. Maybe I
17 don't understand.

18 A. The lender analyzes their all-in recovery by
19 thinking about the fees they get upfront, any discount
20 that it's -- it's advanced at, any exit fees, and any
21 other fees that they might have built into the
22 financing. And then they'd look at it depending upon
23 when it's paid back. So there would be some sort of
24 call protection in these types of financings. And when
25 you get paid back, when you figure out what your

1 interest rate is, what your upfront fees were, what your
2 discount might have been, what your ancillary fees are,
3 and what your call protection is, that's how you analyze
4 your return.

5 Q. The straw-man proposal that you had part of the
6 package, what kind of upfront fees were you -- you
7 suggesting would be available?

8 A. I don't recall. The number I gave before was
9 an all-in term level in that high single-digit, low
10 double-digit range.

11 Q. That would have included both the interest rate
12 and the front-end fees?

13 A. Yes.

14 Q. Is there a team at Highland called the
15 private -- private equity team?

16 A. There is, yeah.

17 Q. What does that team do?

18 A. They help manage the assets that are invested
19 assets in -- in companies. But they -- they do a lot
20 more than that because they get involved in other types
21 of assets that we're analyzing as well.

22 Q. How large is the team?

23 A. It's -- it's really two to three people,
24 depending on how you categorize each person.

25 Q. So your current private equity team is

1 comprised of two to three people?

2 A. Correct.

3 Q. And how many portfolio companies is Highland
4 currently managing?

5 A. Currently -- managing is not -- not fair. We
6 have board representation on two companies that are left
7 and -- and one other asset that is escrow from a prior
8 sale.

9 Q. At the time that -- that Farallon and Stonehill
10 invested in the claims, how many portfolio companies
11 were there? Roughly? I'm not -- I'm not asking for an
12 exactitude.

13 A. Four -- four or five.

14 Q. Okay. And when we talk about a portfolio
15 company, are those companies that are being managed by
16 Highland Capital in which Highland Capital also has an
17 investment?

18 MR. MORRIS: Objection to the form of the
19 question.

20 A. The companies all have their own separate
21 management. And so your description is not accurate.

22 Q. (By Mr. McEntire) Okay. But Highland Capital
23 would have had investments in four or five separate
24 entities at the time that Farallon and Stonehill became
25 involved in these claims?

1 A. Again, I'm not exactly --

2 MR. MORRIS: Objection to the form of the
3 question.

4 A. I'm not exactly sure when Stonehill got
5 involved. But they -- I think that that's -- that's
6 close. Somewhere in that -- in that range.

7 Q. (By Mr. McEntire) Are you aware of any due
8 diligence that Farallon conducted in connection with the
9 asset value of any of these portfolio companies in
10 connection with their investment of these claims?

11 A. Not in connection with their investment in
12 claims, no.

13 Q. Same question with regard to Stonehill. Same
14 answer?

15 A. I'm not aware of what they did in connection
16 with their investment in the claims.

17 Q. Okay. Would you agree that -- this is your
18 full-time job, correct?

19 A. Yeah. Unfortunately, yes.

20 Q. Does it require your full-time attention?

21 A. Yes, it does.

22 Q. And how large is your staff at Highland Capital
23 currently?

24 A. There's 11 of us.

25 Q. So you have 11 people managing the -- the

1 organization, the reorganized debtor at this time
2 basically on a full-time basis, correct?

3 A. Yes.

4 Q. And at the time that Farallon and Stonehill
5 become involved in these claims, how large was the
6 staff?

7 MR. MORRIS: Objection to the form of the
8 question.

9 A. I don't know what -- you know, when Stonehill
10 got involved. When Farallon told me they had bought
11 their claims, it was the same size.

12 Q. (By Mr. McEntire) Okay.

13 A. There might have -- there was one other guy.

14 Q. Can you name the portfolio companies for me at
15 the -- back in the spring of 2021?

16 A. At the -- I don't -- I don't -- when?

17 Q. In -- in the spring of 2021. You just said
18 there were four or five portfolio companies at the time
19 that Farallon became invested in the claims. I would
20 like to know what the names of those companies are.

21 A. I'm not sure I said that. I -- Farallon had
22 their -- when they told me they bought their claims in
23 March, nothing would have changed. We didn't add any
24 assets.

25 Q. Fair enough. As of March of 2021, what were

1 the names of the portfolio companies?

2 A. The portfolio companies that we had were, at
3 that time, Trustwave -- we would consider portfolio
4 companies -- Trustwave, CCS, Seri Limousine,
5 Cornerstone. And I think that's -- I think that's it.

6 Q. And has -- which of those companies still
7 remain portfolio companies today and which ones have
8 been sold?

9 MR. MORRIS: Objection to the form of the
10 question. Direct the witness not to answer.

11 MR. MCENTIRE: I'm sorry?

12 MR. MORRIS: I direct the witness not to
13 answer.

14 MR. MCENTIRE: On what basis?

15 MR. MORRIS: On the basis that it's not
16 relevant. On the basis that Mr. Dondero's personal
17 lawyer at Stinson has pending right now a -- an
18 adversary proceeding where they're seeking this
19 information.

20 On the basis that in our mediation
21 objection, we've put forth documentary evidence showing
22 that this information is being sought for nefarious
23 purposes. On the basis that the court ruled last
24 December that Hunter Mountain has no right to get this
25 information.

1 On the basis that in the complaint that
2 Hunter Mountain filed, that Mr. Dondero's lawyer filed
3 on behalf of Hunter Mountain, in Paragraph 10, they
4 identify with precision the value of each asset owned by
5 the debtor today within \$15 million.

6 So I'm not going to let him -- I'm not
7 going to give free discovery on issues under these
8 circumstances.

9 Q. (By Mr. McEntire) Mr. Seery, would you agree
10 that when you became the CEO of Highland Capital, that
11 this was not your typical simple bankruptcy?

12 MR. STANCIL: Object to the form.

13 A. I actually disagree with that. I think it's
14 actually much, much simpler but for the vexatiousness
15 of -- of Mr. Dondero and his inability to tell the truth
16 and to actually cut any deals. So I think this would
17 have been a very easy case to resolve. And that's what
18 I expected to happen when I became the CEO.

19 Q. (By Mr. McEntire) I see. So you don't think
20 that the -- the nature of the investments and the
21 diversity of the investments of Highland Capital created
22 any level of complexity?

23 MR. STANCIL: Object to the form.

24 A. Every -- every -- every institution is complex.
25 Every -- many businesses have exceedingly much more

1 complexity than -- than this business.

2 What's -- what's -- what's unique about
3 this business was the complete domination and control of
4 one -- one individual who had litigated with the
5 counterparties and became the creditors for north of ten
6 years. That within each of the various entities, he had
7 his own personal interconnected loans and loans from his
8 entities and -- and different interests that have been
9 moved around.

10 And then subsequent to that, the complexity
11 is really finding the -- the bankruptcy fraud where, you
12 know, we realized that the legal department was not
13 accurately named. That it was actually working in part
14 of a conspiracy with Mr. Dondero to hide assets in the
15 estate, including the Sentinel assets and the indemnity
16 that were given to the -- to legal folks.

17 So, yeah, I mean, I don't think this was a
18 complicated case at all. I think this could have been
19 easily resolved. And with normal commercial actors, it
20 would have been.

21 MR. MCENTIRE: Object as nonresponsive.

22 Q. (By Mr. McEntire) Mr. Seery, other than the
23 portfolio companies -- what's so funny about that?

24 A. It was directly responsive to your question.
25 But you can --

1 Q. Well, the record will reflect that it wasn't.
2 But let's proceed.

3 Mr. Seery, other than the portfolio
4 companies, what other companies does -- did Highland
5 Capital have interest in back in the spring of 2021?

6 A. In the spring of 2021, what other interests did
7 Highland Capital have interest in?

8 Q. Yes.

9 A. The ones I mentioned. There were different
10 subsidiaries as well. And they also had -- Highland had
11 an interest in MGM stock that -- that Highland owned.

12 Q. How large a stake did Highland have in the MGM
13 stock?

14 A. It was in the disclosure statement. I think it
15 was about 170,000 shares. I don't recall the exact
16 value. It was subject to a lead in favor of Frontier
17 Bank.

18 Q. And I understand that Highland also had an
19 interest in an entity called HCLOF?

20 A. Highland -- there's no entity called H Cloth.
21 But we do refer to it as HCLOF.

22 Q. Yes. That's the entity.

23 A. And Highland -- Highland had an interest in
24 HCLOF. Well, originally its own interest, plus an
25 interest that was transferred to it by HarbourVest.

1 It's part of the HarbourVest claim settlement.

2 Q. So other than HCLOF, MGM, and the four
3 portfolio companies, did Highland have interest in any
4 other entities?

5 A. There were certainly interests in different
6 investments, I mean, if I'm forgetting anything, at that
7 point, off the top of my head.

8 Q. I'd like to talk about MGM a little bit. When
9 you were with Guggenheim -- let me back up.

10 Have you ever been involved, specifically
11 you personally, in the sale or purchase of securities
12 stock that's regulated by the Securities and Exchange
13 Commission?

14 A. Have -- have I been involved --

15 Q. Yes.

16 A. I -- I have a brokerage account. But it's
17 discretionary with my broker, always has been.

18 Have I been involved in --

19 Q. In a business context where you were
20 representing people or the reorganization proceedings or
21 things of that nature.

22 MR. STANCIL: Object to the form.

23 A. Not that -- not that I recall. I didn't --
24 didn't do a lot to find stock.

25 Q. (By Mr. McEntire) Do you understand the

1 difference and the distinction that the Securities and
2 Exchange Commission draws between rumor and material
3 nonpublic information?

4 MR. STANCIL: Object to the form.

5 A. I don't know that I am up to speed specifically
6 on -- on what -- whatever you just referred, the
7 differences between.

8 Q. (By Mr. McEntire) Are you familiar with the
9 term of "material nonpublic information"?

10 A. I'm generally familiar with the term, yes.

11 Q. What does it mean to you?

12 A. It means --

13 MR. STANCIL: Object to the form.

14 A. My understanding is it means information about
15 a company or a security that relates to the security
16 that a reasonable investor would think was material that
17 is not otherwise publicly disclosed or available.

18 Q. (By Mr. McEntire) What do you mean by
19 "material"?

20 MR. STANCIL: Object to the form.

21 A. I don't know that there's a good definition of
22 "material" that I know.

23 Q. (By Mr. McEntire) Important -- important
24 information that might be relied upon; is that fair?

25 MR. STANCIL: Object to the form.

1 MR. MORRIS: Object to the form of the
2 question.

3 A. No, I don't think that's fair at all.

4 Q. (By Mr. McEntire) Then how would you -- how
5 would you change it?

6 MR. STANCIL: Object to the form.

7 MR. MORRIS: Object to the form of the
8 question.

9 A. I think it's -- it's significant information
10 that would somehow affect the price of the security.

11 MR. MCENTIRE: Okay. Tim, would you put up
12 the exhibit, Mr. Dondero's e-mail, please.

13 Q. (By Mr. McEntire) While he's doing that, are
14 you familiar with what's called a compliance log?

15 A. Not specifically, no.

16 Q. Are you -- does -- as the CEO of the
17 reorganized debtor and the CEO of the former debtor in
18 possession, are you familiar with Highland's policies
19 regarding matters that are put on a restricted list?

20 A. Generally, yes.

21 Q. What is a restricted list?

22 A. Typically a restricted list is a list of
23 securities that either shouldn't be traded or shouldn't
24 be traded without consulting compliance.

25 Q. And why would it not be -- why would you not

1 want to trade it without consulting compliance?

2 A. It could be a myriad of reasons. It could have
3 to do with contractual limitations. It could have to do
4 with pending deals. It could have to do with personnel.
5 And it could have to do with material nonpublic
6 information.

7 Q. The MGM ownership that Highland had at stake,
8 did any other entities in which Highland owned an
9 interest also have a stake in MGM?

10 A. I think that Highland owned an interest in RCP
11 that had a stake in -- in MGM. And Highland had an
12 interest in Multi Strat Fund which had an interest in
13 MGM.

14 Q. How large a stake did Multi Strat have in MGM?

15 A. I don't recall.

16 Q. The other entity that you just identified, how
17 large a stake was it?

18 A. I don't recall.

19 Q. And, also, HCLOF had a stake in MGM stock as
20 well, did it not?

21 A. That's incorrect.

22 Q. HCLOF has never had a stake in MGM?

23 A. No.

24 MR. MORRIS: Objection to the form of the
25 question.

1 A. No, it has not.

2 (Exhibit 4 marked.)

3 Q. (By Mr. McEntire) Okay. Do you recall
4 receiving this e-mail?

5 A. Yes.

6 Q. When you received this e-mail in December of
7 2020, MGM stock was already on the restricted list, was
8 it not?

9 A. I -- I don't know. It -- it may have been on
10 certainly a check -- checklist to make sure that we
11 checked before we did anything to it. But I -- I
12 don't -- I don't have any specific knowledge that it was
13 on the restricted list.

14 Q. Well, after -- did you -- you received this
15 e-mail, did you check to see whether it was on the
16 restricted list?

17 A. I did not check, no.

18 Q. After you received this e-mail, did you ask,
19 suggest that MGM be placed on a restricted list?

20 A. Not that I recall.

21 Q. So after you received this e-mail, you took no
22 steps to determine or to confirm whether or not MGM
23 should be placed on the restricted list?

24 MR. STANCIL: Objection to form.

25 A. That's not what I said.

1 Q. (By Mr. McEntire) Well, that's my question now.

2 A. What -- what's your question?

3 MR. STANCIL: Object to the form.

4 Q. (By Mr. McEntire) After you received this
5 e-mail, is it my understanding that you took no steps to
6 determine whether MGM should be placed on the restricted
7 list?

8 MR. STANCIL: Objection to form.

9 A. I don't think I took steps to determine whether
10 MGM should be put on the restricted list, no. Not that
11 I recall.

12 Q. (By Mr. McEntire) Mr. Dondero, you knew
13 Mr. Dondero was on the board of directors of MGM,
14 correct?

15 A. Yes.

16 Q. After you received this e-mail, did you call
17 Mr. Dondero?

18 A. No.

19 Q. After you received this e-mail -- we're going
20 to mark this as Exhibit 4, by the way. I'll refer to it
21 as Exhibit 4.

22 After you received Exhibit 4, did you have
23 any communications with Mr. Dondero concerning the
24 contents of this e-mail?

25 A. No. Mr. Dondero has a restraining order

1 against him from communicating with me. And I wasn't
2 going to communicate with him. His last communication
3 to me was a threat.

4 Q. If you can answer my question, then, to pierce
5 through it. You had no communications with Mr. Dondero,
6 whether by phone, mail, e-mail, or otherwise, in
7 response to or regarding this e-mail; is that correct?

8 A. That's correct.

9 MR. STANCIL: Objection to form.

10 Q. (By Mr. McEntire) It says that he had just
11 gotten off a -- a board meeting at 3 o'clock that
12 afternoon. Do you see that?

13 MR. MORRIS: Objection to the form of the
14 question.

15 MR. MCENTIRE: Yeah. I'll restate it. I
16 think that's a legitimate objection. I misstated.

17 Q. (By Mr. McEntire) "Just got off a pre-board
18 call. The board call is at 3 o'clock." So this was
19 sent sometime between the pre-board call and the actual
20 call. Do you see that?

21 A. That's what it says.

22 Q. "Update is as follows: Amazon and Apple
23 actively diligence -- diligencing in data room."

24 What is your understanding of a data room?

25 MR. MORRIS: Objection to the form of the

1 question.

2 A. I'm sorry. The data room?

3 Q. (By Mr. McEntire) What is your understanding of
4 a data room?

5 A. A data room is a room that companies or funds
6 put together to put information in for whatever the
7 transaction might be for interested parties to take a
8 look at.

9 Q. It says here, "Both continue to express
10 material interest." That's Amazon and Apple.

11 Have I read that correctly?

12 A. That's what it says, yes.

13 Q. And I think you used the word earlier, at least
14 an adjective. "Material" could be "significant,"
15 correct? Not an adjective --

16 MR STANCIL: Object to the form.

17 Q. (By Mr. McEntire) -- an analog, similar?

18 MR. STANCIL: Object to the form.

19 Objection to the form.

20 A. What's the question?

21 Q. (By Mr. McEntire) Material interest basically
22 also means significant interest, right?

23 MR. STANCIL: Object to the form.

24 A. Are you looking for the word "synonym"?

25 Q. (By Mr. McEntire) Yeah. That works.

1 A. It could -- I think "material" could be viewed
2 as "significant," yes.

3 Q. "Probably first quarter event. Will update as
4 facts change."

5 He's referring to the possibility of a
6 sale. And he actually uses the word "probably," does he
7 not?

8 MR. STANCIL: Objection to form.

9 A. That's not what it says. But the words are
10 what they say.

11 Q. (By Mr. McEntire) And you understood this, when
12 you received it, that he's referring to a sale as being
13 a probable first quarter event, correct?

14 MR. STANCIL: Objection to form.

15 A. Some sort of sale, yes.

16 Q. (By Mr. McEntire) Do you not agree that this is
17 material nonpublic information coming from a board
18 member of the board of directors of MGM telling you that
19 there's a probable first quarter sale?

20 MR. MORRIS: Objection to the --

21 MR. STANCIL: Objection to form. Calls for
22 a legal conclusion.

23 A. I don't think this is material nonpublic at
24 all, no.

25 Q. (By Mr. McEntire) You don't think receiving

1 information from a member of the board of directors
2 indicating that there's a probable sale within the next
3 three months is a -- is -- is material?

4 MR. STANCIL: Objection to form.

5 MR. MORRIS: Objection to the form.

6 A. It doesn't say there's probable sale. It says
7 two people are interested. So I don't think it's --
8 it's material.

9 In addition, material nonpublic, as I
10 understand it, is a specific term of art related to
11 security transactions. When somebody out of the blue
12 sends you an e-mail, someone who's already restrained by
13 a temporary restraining order, someone who's not
14 employed by your company, I don't think that that falls
15 in the definition.

16 Moreover, it doesn't tell me who's going to
17 buy it. It doesn't tell me how much it's going to cost.
18 It doesn't tell me when it's going to happen. And then
19 it says he's going to update facts. He's not allowed to
20 talk to me. He's not allowed to communicate with me.
21 At this time, he was supposed to send, in advance,
22 topics for communication to my lawyers.

23 Q. (By Mr. McEntire) So you're saying that
24 Mr. Dondero is, as a member of the board of directors of
25 MGM, is just a man out of the blue?

1 MR. STANCIL: Objection to form.

2 MR. MORRIS: Objection to the form of the
3 question.

4 A. No. I'm saying -- I'm saying he's -- he's
5 breaching both the TRO and he's breaching his duty of
6 confidence to MGM.

7 Q. (By Mr. McEntire) So he had a duty of
8 confidence to MGM when he sent this to you?

9 MR. STANCIL: Objection to form.

10 A. I would think every board member would.

11 Q. (By Mr. McEntire) So this would be nonpublic,
12 then, because it should be confidential, correct?

13 MR. STANCIL: Objection to form.

14 A. No. I think he's telling me something that the
15 public already knows. But he's not supposed to be
16 telling me anything about what's going on in the board
17 meeting.

18 Q. (By Mr. McEntire) Well, so you think he did
19 something wrong when he sent this e-mail to you. Why?

20 MR. STANCIL: Objection to form.

21 A. Because he's not supposed to be sharing what
22 went on in a board meeting irrespective of whether
23 it's -- it's some new information or any additional
24 information.

25 Q. (By Mr. McEntire) Well, can you identify a

1 single piece of public information that said there was a
2 probable sale in the first quarter of 2021?

3 MR. STANCIL: Objection to form.

4 A. Yes. I think it was widely known that -- that
5 Amazon was for -- MGM was for sale. I think it was
6 widely known that it had to happen quickly. I think it
7 was widely known what the price levels of interest were
8 based upon both market and what the chairman had
9 indicated he was looking for. And it was widely known
10 that both Amazon and Apple were the main contenders to
11 purchase it.

12 Q. (By Mr. McEntire) So you can -- can you
13 identify a single source of information that says that a
14 sale is probable during the first quarter to either
15 Amazon or Apple?

16 MR. STANCIL: Objection to form.

17 A. I believe there's -- there's myriad of
18 publications that indicated the same information.

19 Q. (By Mr. McEntire) Name me one.

20 MR. STANCIL: Objection to form.

21 Q. (By Mr. McEntire) Are these the materials that
22 are attached to your joint opposition?

23 MR. STANCIL: Objection to form.

24 A. Those are a small sample of the dozens and
25 dozens of articles that gave both that information and

1 more.

2 Q. (By Mr. McEntire) Well, I've looked at all the
3 items that you've identified and attached to your
4 opposition. So is it your testimony that those
5 materials state that there's a probable sale in the
6 first quarter of 2021 based upon information provided by
7 a member of the board of directors of MGM?

8 MR. STANCIL: Objection to form.

9 A. I don't have those in front of me. But they
10 provide quite a bit of information.

11 Q. (By Mr. McEntire) Can you answer my question,
12 please?

13 MR. STANCIL: Objection to form.

14 A. I think I just did. I don't have them in front
15 of me.

16 Q. (By Mr. McEntire) So your best answer to my
17 question is you don't have them in front of you?

18 MR. STANCIL: Objection to form.

19 A. Yes. That's my -- my answer is I don't know
20 exactly what each of those articles say. But if you
21 read them all, this doesn't add anything to it.

22 Q. (By Mr. McEntire) All right. So did you --
23 were you consulted at all about MGM coming off the
24 restricted list?

25 MR. STANCIL: Objection to form.

1 MR. MORRIS: Object to the form of the
2 question. Assumes facts not in evidence.

3 A. I -- I didn't have any conversation about MGM
4 coming off the restricted list or going on a restricted
5 list.

6 MR. MCENTIRE: Tim, would you put up the
7 compliance log, please?

8 That's not marked part of the materials. I
9 didn't know I was going to have to use it. But I'm --
10 I'm going to be using a new exhibit.

11 MR. STANCIL: Could you please ask your
12 colleague to e-mail it to me and Mr. --

13 MR. MCENTIRE: Yeah. Please e-mail it
14 to -- please e-mail it to both Mr. Stancil and John
15 Morris.

16 MR. STANCIL: And I think the gentleman
17 from Holland & Knight and the U.S. Trustee should
18 receive it as well.

19 MR. MCENTIRE: It's marked as confidential.

20 MR. STANCIL: Well, I guess that's a
21 question -- I don't know if Holland & Knight have signed
22 a protective order or not. But if you're about to show
23 a confidential document in a deposition --

24 Can I ask you to take that down before we
25 put that up in front of people in the deposition? Thank

1 you.

2 So what's the status of this document
3 relative to the protective order? Is there a protective
4 order in place that governs this?

5 MR. MCENTIRE: I don't know that there's a
6 protective order governing this particular use in
7 this -- in this contested proceeding.

8 MR. MORRIS: Where did you get it?

9 MR. MCENTIRE: Well, first of all, we get
10 it from a source that -- that we got it from. It's --

11 MR. MORRIS: It's a Highland document,
12 isn't it?

13 MR. MCENTIRE: No, it's not. It's not a
14 Highland document. This is a shared document with
15 NexPoint. So this comes from NexPoint.

16 And so if you -- are you suggesting that
17 you do not -- you're going to object to my use of this
18 document even though it's not a Highland document? It
19 is marked as confidential as well.

20 MR. STANCIL: Well, before we allow it to
21 be publicly displayed in a public forum, I'm not going
22 to participate in displaying a confidential document if
23 you can't tell me why it's marked confidential.

24 Q. (By Mr. McEntire) Let me ask you this question,
25 Mr. Seery. Let me grab my document. One second.

1 Mr. Seery, who is -- and I may not be
2 pronouncing this name correctly. Who is Tim Cournoyer?

3 A. He is part of the Highland team right now.
4 He's part of the PE group, as well as he was previously
5 at Highland.

6 Q. Is he no longer with Highland?

7 A. He's -- he's currently with Highland, yes.

8 Q. What is his --

9 (Simultaneous speaking.)

10 Q. (By Mr. McEntire) What is his position?

11 A. He's part of the private equity team.

12 Q. Does he have any responsibilities over
13 maintaining compliance logs at Highland?

14 MR. MORRIS: I'm going to direct the
15 witness not to answer. Again, I don't know what this
16 has to do with the colorability of your claims. If you
17 want to ask Mr. -- Mr. Seery is here today in his
18 individual capacity. If you want to ask him what he
19 did, what he said, what he didn't do, that's fine. But
20 we're not going to take discovery into Highland's inner
21 workings.

22 Q. (By Mr. McEntire) I need to ask this question.
23 First of all, are you going to follow your -- I guess is
24 Mr. Morris your lawyer?

25 MR. MORRIS: I'm the lawyer for Highland

1 Capital Management. And that's -- that's what I'm
2 protecting here, not Jim Seery.

3 Q. (By Mr. McEntire) So can you tell me why -- let
4 me back up.

5 Did you give any instructions to Tim
6 Cournoyer to take MGM off the restricted list in April
7 of 2021?

8 MR. MORRIS: Objection as to form.

9 A. Not -- not that I recall, no.

10 Q. (By Mr. McEntire) And you stated that -- did
11 you know that MGM was on the restricted list and was --
12 and was to be retained on the restricted list until July
13 of 2021?

14 MR. MORRIS: Objection, asked and answered.

15 MR. STANCIL: Objection to form.

16 MR. MORRIS: (Inaudible) objection.

17 A. 2021?

18 Q. (By Mr. McEntire) July of 2021.

19 MR. STANCIL: Same objection.

20 A. Whose restricted list?

21 Q. (By Mr. McEntire) It's a shared list between
22 NexPoint and Highland.

23 MR. STANCIL: Objection to form.

24 A. Highland didn't have any relationship with
25 NexPoint in 2021.

1 Q. (By Mr. McEntire) It was not a shared
2 agreement -- was it not a shared agreement where this
3 compliance log would be shared between the two
4 companies?

5 MR. STANCIL: Objection to form.

6 A. Not -- not that I recall. We certainly didn't
7 have any communication. So there's no reason that any
8 information at NexPoint would be on a shared list.

9 If -- if our system maintained it because
10 NexPoint didn't have systems and were using our system,
11 that's NexPoint's. It shouldn't have been anything that
12 would've had to do with Highland. We didn't have any
13 relationship with them.

14 Q. (By Mr. McEntire) Well, wasn't Mr. Dondero the
15 president of -- of one of the funds?

16 A. No. Of Highland's fund?

17 (Simultaneous speaking.)

18 A. No. Mr. Donder- -- after -- after Mr. Dondero
19 resigned, first he resigned from all capacity except a
20 last second inclusion as a portfolio manager, which, in
21 hindsight, we -- we can now tell was -- was part of a
22 scheme. And then he resigned in October of 2020 when he
23 was -- was asked to do so by the independent board. And
24 then he had a TRO against him in December of 2020. And
25 then the plan got confirmed. And all the contracts had

1 been rejected. He had no relationship with -- with
2 Highland.

3 Q. (By Mr. McEntire) Wasn't Mr. Dondero the
4 president of NexPoint Advisors?

5 A. That's not Highland.

6 Q. Are you suggesting there's no relationship at
7 all between NexPoint Advisors and Highland?

8 MR. MORRIS: Objection, asked and answered.

9 A. I am so suggesting, yes.

10 Q. (By Mr. McEntire) Wasn't there a shared
11 services agreement between NexPoint and Highland at this
12 time?

13 MR. STANCIL: Objection to form.

14 A. I don't think so, no.

15 Q. (By Mr. McEntire) If Mr. -- if Mr. Linn had
16 stated that he was particularly excited about MGM based
17 upon his conversations with you, is that not true?

18 MR. STANCIL: Objection to form.

19 MR. MORRIS: Objection to the form.

20 MR. SCHULTE: Objection to form.

21 A. I don't recall any such conversation with
22 Mr. Linn. Do you know when that supposedly happened?

23 Q. (By Mr. McEntire) And if -- so are you saying
24 it didn't happen?

25 MR. STANCIL: Objection to form.

1 A. I don't recall any such conversation with
2 Mr. Linn. I do recall that throughout 2021, post
3 effective date, I was constructive about MGM being able
4 to get through the FTC when others were less certain
5 that that could happen. And it was a very risky
6 endeavor.

7 Q. (By Mr. McEntire) Well, let's make sure our
8 timing is -- is clear.

9 Prior to the date that Farallon purchased
10 its interest in the claims at issue, do you deny having
11 a conversation with Mr. Linn to the effect that he
12 became optimistic about the potential of an MGM sale?

13 MR. STANCIL: Objection to form.

14 A. Yes. Let me make really clear because I've
15 said this to you a bunch of times. And you keep trying
16 to come up with some new way to trick me. I had no
17 conversations, none, with Mr. Linn prior to his
18 acquisition of the claims when he told me that by e-mail
19 on March 15, 2021. None. Zero.

20 Q. (By Mr. McEntire) Same question with Mr. Patel.
21 Do you deny that you had any conversations with
22 Mr. Patel concerning the MGM sale prior to the date that
23 they acquired their -- Farallon acquired its interest in
24 these claims?

25 A. Yes.

1 MR. STANCIL: Objection to form.

2 A. Yes, categorically deny it.

3 MR. SCHULTE: Objection, form.

4 A. I testified that I didn't have any
5 conversations with Mr. Patel, I don't think since I was
6 in their office prior to Highland even filing
7 bankruptcy.

8 Q. (By Mr. McEntire) So if I understand your
9 testimony correctly, after December of 2020, when
10 Mr. Dondero sent his e-mail to you about MGM, you have
11 had no subsequent communications with Mr. Dondero at all
12 in any regard; is that correct?

13 MR. STANCIL: Objection to form.

14 A. I didn't have a communication with Mr. Dondero
15 with his e-mail sent in violation of a TRO. I have not
16 spoken to Mr. Dondero since shortly after he sent me a
17 threatening text.

18 Q. (By Mr. McEntire) And when was that?

19 A. I believe that was in --

20 MR. MORRIS: December 3rd.

21 A. There we go. Early December.

22 Q. (By Mr. McEntire) All right. So since
23 December -- since December 3 of 2020, you've had no
24 communications with Mr. Dondero, other than receiving
25 that one e-mail?

1 MR. STANCIL: Objection to form.

2 Q. (By Mr. McEntire) Is that correct?

3 A. That -- I believe that's correct.

4 MR. MCENTIRE: Tim, would you pull up
5 the -- Tab 5? What exhibit number will this be, Tim?

6 MR. MILLER: 5. Or -- yes. It's 5.

7 (Exhibit 5 marked.)

8 Q. (By Mr. McEntire) Can you identify this
9 document?

10 MR. MCENTIRE: First, if we could go to the
11 top, please, Tim, so he can see the top of the document.

12 Q. (By Mr. McEntire) This is filed of public
13 record in the bankruptcy proceedings. We're going to
14 mark this as Exhibit 5. It's Debtor's Notice of Filing
15 of Plan Supplement to the Fifth Amended Plan of
16 Reorganization. Do you see that?

17 A. Yes.

18 MR. MCENTIRE: Would you scroll through it
19 so Mr. Seery can confirm that -- that this is an
20 attached document. Scroll a little bit slower, please,
21 so he can see it.

22 MR. MILLER: It's 48 pages.

23 MR. MCENTIRE: 48 pages. I'm only going to
24 be addressing the first few pages.

25 MR. STANCIL: Mr. McEntire, I just want to

1 make sure I have the right one. This is Docket

2 No. 1875?

3 MR. MCENTIRE: Yes.

4 MR. STANCIL: So I think I saw a barcode on
5 the front of the version you put up. But it's not on
6 what I have. Is that -- I just want to make sure I'm
7 not looking at --

8 MR. MCENTIRE: I -- I think you're looking
9 at the same document.

10 MR. STANCIL: Well, how do I -- I want
11 to -- can we just confirm that? Can you --

12 MR. MCENTIRE: Tim, please confirm it.

13 MR. STANCIL: Well...

14 MR. MCENTIRE: Can we go back to the
15 beginning, please?

16 MR. MILLER: Yeah. One sec.

17 MR. MCENTIRE: Put the document back up,
18 please. Tim, please put the document back up.

19 MR. MILLER: Yeah. I'm confirming the same
20 version is what we sent. This is Exhibit 5.

21 THE WITNESS: Can we go off the record for
22 two seconds while you guys do this so I can step out of
23 the room?

24 MR. MCENTIRE: Sure.

25 THE WITNESS: Thanks.

1 THE VIDEOGRAPHER: The time is 1:31 p.m.
2 We're going off the video record.

3 (Break taken from 1:31 p.m. to 1:34 p.m.)

4 THE VIDEOGRAPHER: The time is 1:34 p.m.
5 We're back on the video record.

6 MR. MCENTIRE: Tim, would you please put up
7 Exhibit 5, please.

8 MR. MILLER: Yeah.

9 Q. (By Mr. McEntire) So this is the -- again, the
10 debtor's notice of filing of plan. This is the document
11 we were looking at while you left the room.

12 MR. MCENTIRE: And, Tim, I would like -- I
13 would like you to turn to Page 3 of Exhibit A, please.
14 If you can scroll down to the bottom.

15 Q. (By Mr. McEntire) Would you have reviewed this
16 before it was made publicly available, Mr. Seery?

17 A. Yes.

18 MR. STANCIL: Objection to form.

19 Q. (By Mr. McEntire) And you would have confirmed
20 and authorized the -- the use of this as the CEO of
21 the -- of the debtor in possession?

22 MR. STANCIL: Objection to form.

23 A. Yes, sir. I certainly reviewed it and approved
24 its -- its filing, yes.

25 Q. (By Mr. McEntire) All right. It says under

1 Section P, the "See below for Class 8 estimated payout
2 schedule. Payout is subject to certain assets being
3 monetized by payout date. No plan requirement to do
4 so."

5 Do you see where I've read?

6 A. Yes.

7 Q. It says by September 30 of 2021, \$50 million
8 would be distributed. Do you see that?

9 A. Yes.

10 Q. By March 31st of 2022, almost a year and one
11 month later, another \$50 million. Do you see that?

12 A. I see that. But you're --

13 Q. I'm asking from the date of the confirmation
14 of --

15 A. Oh, okay. All right. But not from
16 September '21?

17 Q. No, of course not.

18 So as of almost a year and one month after
19 the confirmation of the plan, it was estimated that only
20 \$100 million would be paid out to Class 8. Do you see
21 that?

22 A. I -- I challenge your use of the word "only."
23 But it says 100 million, yes.

24 Q. And these are the projections, agree?

25 A. That's correct.

1 Q. And the projections are based upon presumably
2 your private equity group putting it together? Did they
3 sign off on this, by the way?

4 MR. MORRIS: Objection to the form.

5 MR. STANCIL: Objection.

6 A. I -- I don't believe that we had separate
7 sign-off from anybody at Highland. We reviewed the
8 information with our financial advisor, DSI. And we
9 used the Highland marks. And the Highland team reviewed
10 those with DSI, which would include both accounting and
11 the PE team and the evaluation committees. But I don't
12 recall having a specific sign-off because I don't
13 believe, at this point yet, we had necessarily had the
14 team put together. We used the Highland employees who
15 were there at the time.

16 Q. (By Mr. McEntire) DSI put these numbers
17 together?

18 A. Yes.

19 Q. By June 30, 2022 -- so this will be a year and
20 four months later -- another additional \$25 million. Do
21 you see that?

22 A. Yes.

23 MR. STANCIL: Object to form.

24 Q. (By Mr. McEntire) So roughly from February of
25 2021 through roughly 16 months, 15 months later, a

1 projected \$125 million would be paid; is that fair?

2 Projected?

3 A. Yeah, using those dates. But there is a --
4 there is a model on the back of this. So that -- that's
5 correct.

6 Q. Well, are you suggesting that these dates were
7 inaccurate?

8 A. No.

9 MR. STANCIL: Object to the form.

10 A. No. I'm suggesting you're using the -- I don't
11 recall the exact date that the start date on this goes
12 from, which would be attached to it. But rather than
13 using the -- the date this was filed, whenever the start
14 date would be, over that period of time, it would be
15 \$125 million.

16 MR. MCENTIRE: Go to the next page, Tim,
17 Page 4 of this exhibit, Page 4 of Exhibit A of
18 Exhibit 5.

19 Q. (By Mr. McEntire) It says, "Total estimated
20 available dollars for distribution." You have your plan
21 analysis, and you have your liquidation analysis. Do
22 you see where I'm reading at the top?

23 A. Yes.

24 Q. So the projections on February 1st of 2021,
25 this would have been filed of public record, correct, as

1 part of the -- the plan confirmation?

2 A. Yes.

3 Q. In this, it identified the total available
4 funds available to pay the unsecured creditors. It
5 would be \$222,658,000. Am I correct?

6 A. That's incorrect.

7 Q. If you read down on the sheet, it estimates the
8 amount remaining for distribution to the general
9 unsecured creditors is actually less than that. It's
10 actually about 194 million because you have taken out
11 Class 1 through 7?

12 MR. MORRIS: Objection --

13 MR. STANCIL: Objection to form.

14 MR. MORRIS: -- form of the question. The
15 document speaks for itself.

16 A. Yeah. Your premise started wrong. And so you
17 just continued to go wrong. But that's why, yes,
18 estimated amount remaining for distribution to general
19 unsecured creditors is 194 in the plan analysis and 157
20 in the liquidation analysis.

21 Q. (By Mr. McEntire) Okay. So do you know how
22 much Farallon and Stonehill invested in this -- in the
23 acquisition of these claims?

24 A. I don't. The only -- you guys threw out a
25 number. But I don't remember what it was.

1 Q. I believe our pleadings suggest as high as
2 163 million combined in acquiring these claims.

3 MR. STANCIL: Objection.

4 MR. MORRIS: Objection. He's got no
5 knowledge.

6 A. I don't --

7 MR. MCENTIRE: I haven't finished my
8 question.

9 MR. MORRIS: Yeah. I think -- I think
10 you're -- I think you're --

11 MR. MCENTIRE: Guys, please. Please. I
12 wasn't even finished with my question. You're
13 interrupting me, all right?

14 MR. SCHULTE: Objection, form.

15 Q. (By Mr. McEntire) My question is this: We have
16 stated in our pleadings that Farallon and Stonehill
17 invested as much as \$163 million. Do you have any
18 information, that you're aware of, to deny that?

19 MR. MORRIS: Objection.

20 MR. SCHULTE: Objection, form.

21 MR. STANCIL: Objection.

22 A. I don't know what they paid for their -- their
23 claims that they purchased. The only knowledge I have
24 is what I've read in your documents. And I don't recall
25 the number you used.

1 Q. (By Mr. McEntire) Have you ever discussed with
2 Muck or Jessup how much was -- how much money was
3 involved in investing in these claims?

4 A. At one point, I discussed it with Farallon.

5 Q. And what did Farallon tell you?

6 A. They wouldn't tell me what they paid. They --
7 I -- they just wouldn't tell me what they paid. And I
8 didn't press it.

9 Q. Are you familiar with rates of return that
10 investors typically seek when they buy a distressed
11 asset in the form of a claim in a bankruptcy proceeding?

12 MR. MORRIS: Objection to the form of the
13 question.

14 MR. STANCIL: Objection.

15 MR. MORRIS: I question the relevance.
16 Like, what are we doing here, Sawnie?

17 MR. MCENTIRE: Listen, I'm not here to
18 answer your questions, John. I'm asking the witness
19 questions.

20 MR. MORRIS: Well, I'm going to direct him
21 not to answer unless I have some context for this. What
22 Mr. Seery's perceptions of value or the rest of it, I
23 don't see how it goes to the colorability of your
24 claims.

25 MR. MCENTIRE: Well --

1 MR. MORRIS: Unless you can help me to
2 understand that, I'm going to begin to direct him not to
3 answer.

4 MR. MCENTIRE: Then you're going to be your
5 own worst enemy, Mr. Morris --

6 MR. MORRIS: Okay.

7 MR. MCENTIRE: -- because my question is
8 highly relevant.

9 Q. (By Mr. McEntire) Mr. Seery, I'm going to ask
10 the question to make sure it's on the record and it's
11 clear.

12 MR. MORRIS: Do you want to help me to
13 understand the relevance because I don't --

14 MR. MCENTIRE: Mr. Morris, let me finish,
15 please. You're wasting my time.

16 MR. MORRIS: Yeah. Well, you're wasting my
17 time. But go ahead.

18 Q. (By Mr. McEntire) Mr. Seery, do you know what
19 the spectrum of expected rates of return are for a
20 company buying a distressed asset in the form of a claim
21 in a bankruptcy proceeding, what they typically look
22 for?

23 MR. MORRIS: Objection to the form.

24 MR. STANCIL: Objection.

25 MR. MORRIS: Calls for a legal conclusion.

1 A. I don't understand your question.

2 Q. (By Mr. McEntire) So as a person who is a
3 specialist and an expert in distressed assets, do you
4 know what your typical rate of return is before you buy
5 a distressed asset?

6 MR. MORRIS: Objection.

7 MR. STANCIL: Objection.

8 MR. MORRIS: Calls for a legal conclusion.

9 A. I don't know what the expert part is, where you
10 got that one. But I am -- I am experienced. And -- and
11 the rate of return that you would receive on
12 investments, it varies widely.

13 Q. (By Mr. McEntire) All right. As a person
14 who's -- holds himself out as an expert in distressed
15 assets, do you think it's prudent to invest \$163 million
16 if you're not expected to receive any return on Class 9
17 claims?

18 MR. MORRIS: Objection --

19 MR. STANCIL: Objection to the form of the
20 question.

21 A. I don't hold myself out as an expert. Your
22 math is really lacking. That's -- that's not how you'd
23 analyze your investment. And each investment is
24 different. So each claim would be purchased at
25 different times for different amounts, analyzing what

1 you think the risks are, what the returns are, and what
2 the upward -- the upward possible benefits are and what
3 you think your possible losses could be.

4 Q. (By Mr. McEntire) Well, what would -- fair
5 enough.

6 A. I'm not done yet. I'm not done. I'm still
7 working on your question.

8 Q. All right.

9 A. (Inaudible) thinking about whether you need to
10 hedge it, whether you -- whether there are other
11 offsetting investments you have. And then also what
12 you -- what other places you can use your money.
13 Because depending on the type of investor you are, there
14 may -- may be better places the way the risk returns
15 that are more appropriate than one -- one investment or
16 another.

17 Q. Did you consider the acquisition of the claims
18 at issue in this -- this matter to be risky?

19 MR. MORRIS: Objection --

20 MR. STANCIL: Objection to form.

21 MR. MORRIS: -- to the form of the
22 question.

23 A. I've never -- I've never thought about whether
24 it was a risky trade or a -- or a unrisky trade.

25 Q. (By Mr. McEntire) Based upon what you know of

1 the Highland bankruptcy proceedings in February of 2021,
2 would you have advised a client to invest \$163 million
3 in these claims when the expected return was only
4 194 million?

5 MR. SCHULTE: Objection, form.

6 MR. STANCIL: Objection, form. This is
7 improper.

8 Sawnie, you're testifying and trying to --
9 to put it into a question. So if you have a real
10 question that's relevant to this, I'd suggest you ask
11 it. But making your characterizations and saying "isn't
12 that right," this is -- you're not trying to collect
13 information. You're trying to grab a sound bite.

14 Q. (By Mr. McEntire) Mr. Seery, please answer my
15 question.

16 (Simultaneous speaking.)

17 MR. STANCIL: Hold on, James.

18 MR. SCHULTE: Objection, form.

19 MR. STANCIL: I object to the -- object to
20 the form of the question. I object to whether it's a
21 question at all.

22 MR. MCENTIRE: Well, let me make sure it
23 comes across as a question.

24 Q. (By Mr. McEntire) Mr. Seery, as a person who is
25 experienced in distressed assets, would you have advised

1 a client to invest \$163 million to acquire a claim where
2 the only expected payout was 194 million over time?

3 MR. SCHULTE: Objection, form.

4 MR. MORRIS: Objection to the form of the
5 question.

6 MR. STANCIL: I object both to the form of
7 the question and to the relevance of the question,
8 Mr. Seery's advice to clients.

9 MR. MORRIS: It's hypothetical.

10 MR. STANCIL: He's already testi- -- it's
11 hypothetical; it's speculation. He's testified he
12 didn't give any guidance to anybody on these claims.
13 So --

14 MR. MORRIS: But you can answer.

15 MR. STANCIL: -- this is -- go ahead.

16 A. It would totally depend on -- on what the
17 return profile looked like, how secure it looked, what
18 the potential upside beyond that would be. The premise
19 of your question, though, is -- is -- is deceptive. And
20 that's what kind of disgusts me about it. And you know
21 this because we testified -- I testified earlier that I
22 had a conversation with UBS. They didn't actually do
23 anything to trade their claim because they asked about
24 the effective date in August of 2021. So your premise
25 of 163 was -- I have no idea whether your numbers are

1 right. I have no idea what -- what you're claiming.

2 But was 163 -- nobody spent 163 million, that I know of
3 and you know of, in February of -- of 2021.

4 MR. MCENTIRE: Ms. Court Reporter, would
5 you read back the first part of his answer, please. I
6 got -- I lost it.

7 MR. STANCIL: Please read the whole answer
8 back.

9 THE COURT REPORTER: Okay. Please hold.

10 (Requested portion read back.)

11 Q. (By Mr. McEntire) Okay. So using your words,
12 Mr. Seery, can you tell me, if you know, what
13 investigation Farallon conducted to try to estimate the
14 potential upside of this investment and the claims at
15 issue?

16 MR. STANCIL: Objection, asked and
17 answered.

18 A. I have no idea what they did. I never
19 discussed the claims purchase with them.

20 Q. (By Mr. McEntire) Same question with regard
21 to -- to Stonehill. Same answer?

22 MR. STANCIL: Same objection.

23 A. Same answer.

24 Q. (By Mr. McEntire) Mr. Seery, do you know where
25 Muck received the funds to -- to actually acquire the

1 claims?

2 A. I have no idea.

3 Q. Do you know where Jessup received the funds to
4 actually acquire its interest in the claims?

5 A. No.

6 Q. Looking at Exhibit 5, the percentage
7 distribution to general unsecured claims, do you see
8 that, 71 percent?

9 A. Yes. 71.32 percent.

10 Q. 71.32 percent, yes.

11 And then it has, underneath that, "Class 9
12 subordinated claims, no distribution." Do you see that?

13 A. Correct.

14 Q. And then Class 10, that would be the Hunter
15 Mountain Investment Trust equity position. No
16 distribution anticipated as of this time period,
17 correct?

18 A. Class 10 says no distribution.

19 Q. So can you tell me whether or not you're aware
20 of any other information distributed by Highland
21 management -- excuse me -- Highland Capital between this
22 date and the effective date that changed the projected
23 percent of distribution of 71.32 percent?

24 MR. MORRIS: Object to the form --

25 MR. STANCIL: Object to the form.

1 MR. MORRIS: -- of the question.

2 A. I think I already said we never changed the
3 71.32 distribution because once the plan was confirmed,
4 we don't go back and redo these analyses.

5 MR. MCENTIRE: Could you go to Tab 6,
6 please, Tim. And put up what we're going to now mark as
7 Exhibit 6.

8 (Exhibit 6 marked.)

9 Q. (By Mr. McEntire) Exhibit 6 is another public
10 record, Mr. Seery. It's -- it was filed in the public
11 records in March of 2021. But I believe, if you look at
12 the front page, it's the month ending January of 2021.
13 Do you see that?

14 A. Yes.

15 Q. Did DSI prepare these monthly reports, or was
16 this something that was prepared by the staff at
17 Highland Capital?

18 A. Typically a combination. DSI would be final
19 responsibility, I believe. But they got the information
20 from the finance team.

21 Q. This is your signature here that we see, chief
22 restructuring officer?

23 A. Yes.

24 Q. By the way, what did you perceive to be your
25 duties as the chief restructuring officer?

1 MR. STANCIL: Objection to the form, asked
2 and answered, calls for a legal conclusion.

3 A. My -- my belief is that I was responsible for
4 trying to get a restructuring done.

5 Q. (By Mr. McEntire) So was the chief
6 restructuring officer going to actually reorganize the
7 entity or was it trying to liquidate the entity?

8 MR. STANCIL: Objection to the form.

9 A. Trying to -- trying to achieve a restructuring.

10 Q. (By Mr. McEntire) Which would be something
11 other than liquidation, correct?

12 A. It could be liquidation if that -- if that's in
13 the best interest of the estate, yes.

14 Q. When did you make the decision that that was in
15 the best interest of the estate?

16 MR. STANCIL: Objection to form.

17 MR. MORRIS: Objection to the form of the
18 question. I mean, we had a confirmation hearing. I
19 know you weren't around, but...

20 A. I never made any such decision. There was a
21 board that I was part of that made the decisions. And
22 working with the creditors committee, unable to get a
23 transaction done with Mr. Dondero even after mediation,
24 the board reached a conclusion that the monetization
25 plan that we filed was the most appropriate structure.

1 It was a reorganization designed to monetize the assets
2 over time and not to do a quick liquidation.

3 Q. (By Mr. McEntire) If you look at the second
4 page of this Exhibit 6, it states that October 15th of
5 2019, I understand that to be the petition date. Is
6 that generally your understanding?

7 A. Can you go back up a little bit? I just didn't
8 see the signatures. I don't know who else signed this
9 with me.

10 Q. Your signature and David Klos or Klos?

11 A. Yeah. I just don't recognize his.

12 Q. Okay. Well, it was filed of public record.
13 This comes right from --

14 A. I just didn't recognize it.

15 Q. Fair enough.

16 If we go to the next page, if you look,
17 under "Total Assets," on October 15 of 2019, Highland
18 Capital had assets of \$566 million. Do you see that?

19 A. Yes, I see it.

20 Q. And then on 12 -- December 31st, 2020, it
21 reports a decline -- well, it's more than a \$200 million
22 decline. What do you associate that decline with?

23 A. Predom- -- predominately it was a degradation
24 in value that was even deeper than that, I believe. And
25 it went through COVID effect on assets. And then being

1 entirely overlevered and margined in some securities
2 accounts, which the debtor couldn't meet and that the
3 portfolio manager refused to meet. And then those
4 recedes. So that -- that cost a lot of money. And that
5 forced securities selling in the first half of the year.
6 So those were the biggest drivers, I believe, of -- of
7 the declination in value.

8 Q. If you go down to the "Liabilities and Partners
9 Capital," it has Class 8 general un- -- unsecured
10 claims. So, basically, as of January 31st of -- excuse
11 me -- December 31st of 2020, it was projecting
12 \$73 million in general -- general -- Class 8 general
13 unsecured claims. Do you see that?

14 A. I see -- I see the number. I don't think
15 that's a projection.

16 Q. No, that's not a projection. That would have
17 been something a little bit different because this was
18 actually prepared in January, right?

19 A. No. It's a balance sheet.

20 Q. Balance sheet. What is the January 31st, 2021?
21 Is that a projection?

22 A. It's not a projection. I believe that would
23 have been the claims that were allowed as of that date.
24 I don't -- I don't have the full data. But that's what
25 I think.

1 Q. Okay. Now I understand.

2 So -- but let's go back to the first page.
3 This is what I'm trying to understand. This was
4 prepared in January of 2021.

5 MR. MCENTIRE: Okay. Go back to the page
6 we were on.

7 MR. MORRIS: Objection to the form of the
8 question.

9 Q. (By Mr. McEntire) And so on January 31, 2021,
10 there's a total of \$267 million worth of unsecured
11 claims. These are the claims that some of which were
12 purchased by Farallon and Stonehill, correct?

13 MR. STANCIL: Objection to form.

14 MR. MORRIS: Objection to the form of the
15 question.

16 A. I -- I don't know.

17 Q. (By Mr. McEntire) Well, other than -- you agree
18 that Farallon and Stonehill bought the vast majority of
19 unsecured claims, do you not?

20 MR. STANCIL: Objection to form.

21 MR. MORRIS: Objection to the form of the
22 question.

23 A. I don't know. I know when Farallon told me
24 they bought their claims in March of 2021 that I've
25 already testified to. I don't know when Stonehill

1 bought its claim. And I don't know what's in the
2 1-31-21 number, meaning I don't know, for example, if
3 UBS is in that number. I just -- I just don't know what
4 that's reflecting at this time.

5 MR. MCENTIRE: Okay. Scroll down.

6 Q. (By Mr. McEntire) In the footnotes, Footnote
7 No. 7, it says, "Does not include Class 9 claims for
8 which recoveries are not currently expected." Do you
9 see that?

10 A. Yeah. I'm looking at Footnote 2, though, which
11 it would have been nice to show me that earlier. But
12 that tells you what's in that number.

13 Q. Okay. Fair enough.

14 A. I do see -- I do -- I do see the No. 7, yes.

15 Q. And No. 7 says you're still projecting no
16 recoveries for Class 9 claims, correct?

17 A. It doesn't say anything about projections. It
18 says what it says.

19 Q. Well, when you say you don't expect to have any
20 recovery for Class 9 claims, if that's not a projection,
21 what is it?

22 A. It's an expectation.

23 Q. Okay. An expectation. So as of March 15,
24 2021, Highland Capital is advising the public who are
25 following the -- the Highland Capital bankruptcy that

1 there is no expectation of Class 9 claims receiving
2 recovery, correct?

3 A. That's when the date of this document was
4 filed. I think the date of the -- up above is a
5 different date than that. But that's what's being told
6 the current expectation at that time is, yes.

7 Q. That was my question. Thank you.

8 A. Yeah. Your dates were wrong, though.

9 MR. MCENTIRE: Tim, would you pull up
10 Tab 8. We'll mark it as Exhibit 7.

11 MR. STANCIL: Did you mark this one,
12 Mr. McEntire?

13 MR. MCENTIRE: 6.

14 MR. STANCIL: This is 6. Okay. So now
15 we're on to 7?

16 MR. MCENTIRE: Yes.

17 MR. STANCIL: Okay.

18 (Exhibit 7 marked.)

19 Q. (By Mr. McEntire) So what is marked as
20 Exhibit 7, Mr. Seery, is also another public record.
21 It's for the quarter ending March 31st, 2023. This was
22 recently filed. Have you seen this document before?

23 A. I believe so, yes.

24 Q. All right. And I'd like to direct your
25 attention specifically to Page -- one second, please.

1 To Page 7.

2 So if I understand this summary in Part 3,
3 as of this date, which is March 31, 2023, you had a
4 total allowed claims of \$397 million, and you had paid
5 on those claims \$270 million and some change; is that
6 correct?

7 A. I apologize. What's the date of this document?

8 Q. It's dated at the top. It's March 31st, 2023.

9 MR. STANCIL: Is that the filing date or
10 the as-of date?

11 MR. MCENTIRE: That's the -- that's the
12 quarter ending date. The filing date is reflected at
13 the top of the document. It's April 21.

14 MR. STANCIL: Thank you.

15 Q. (By Mr. McEntire) So if I understand correctly,
16 as of the filing date then, you had allowed claims of
17 \$397 million and some change, and you had paid towards
18 those claims \$270 million and some change; is that
19 correct?

20 A. I believe that's correct, yes.

21 Q. For a total of 68 percent payout, correct?

22 A. Versus the total amount of allowed claims, yes.

23 Q. And sitting here today, does -- as the trustee,
24 do you expect that all of Class 8 will be paid?

25 MR. STANCIL: Objection to form.

1 MR. MORRIS: Objection.

2 Actually, you know what? Go ahead. You
3 can answer.

4 A. I don't, actually, right now. And -- and the
5 reason is that we have an obligation to meet all of our
6 senior obligations before any claims get paid out.

7 So, first, we've got to cover -- recover
8 about 100 million from Dondero-related entities and
9 notes. Got to sell off the remaining assets. And then
10 we have to reserve for current and expected
11 indemnifications. And I think those, my own estimation,
12 looking at the prior litigations that Dondero has been
13 involved in, they're going to be -- that's going to be a
14 lot of reserves.

15 Q. (By Mr. McEntire) What are the reserves
16 currently?

17 A. I don't --

18 MR. STANCIL: Objection to form.

19 A. I don't recall off the top of my head.

20 Q. (By Mr. McEntire) Who sets those reserves?
21 You?

22 MR. STANCIL: Objection to form.

23 A. It depends on where the reserves are. And so
24 each -- each has been set by the oversight board with my
25 involvement. I do have the ability, under the claimant

1 trust agreement, to reserve effectively what my
2 determination is of the appropriate reserves.

3 Q. (By Mr. McEntire) Well, how much have you
4 determined is appropriate?

5 MR. STANCIL: Objection to form.

6 A. I don't -- I don't recall right now.

7 Q. (By Mr. McEntire) Is it in the neighborhood of
8 \$30 million?

9 MR. STANCIL: Objection to form.

10 A. I think we reserved a little bit more than
11 that.

12 Q. (By Mr. McEntire) What happens to that money if
13 it's not used?

14 A. Depending on where it is, so the claimant trust
15 agreement has a very specific delineation of what
16 happens. And then the indemnity trust agreement, which
17 is a separate trust, has a very specific delineation of
18 how it's to be used.

19 Q. What happens if it's not used, for indemnity
20 purposes?

21 MR. MORRIS: The document speaks for
22 itself. Objection to the form of the question.

23 Q. (By Mr. McEntire) You've identified that it has
24 very detailed procedures. I'm asking you what that is.
25 How much --

1 MR. STANCIL: Objection to the form.

2 MR. MORRIS: Objection to the form of the
3 question.

4 A. I don't know off the top of my head. But,
5 basically, the -- the indemnity trust agreement provides
6 that it would be distributed the way the indemnity trust
7 is set up once all of the indemnification obligations
8 are satisfied in full.

9 Q. (By Mr. McEntire) Distributed to creditors?

10 MR. STANCIL: Objection to form.

11 A. It would be distributed in the manner set forth
12 in the claimant trust agreement.

13 Q. (By Mr. McEntire) Is that to creditors?

14 MR. STANCIL: Objection to form.

15 MR. MORRIS: Form of the question. There
16 are no creditors.

17 A. Ultimately it would be to the -- to the trust
18 special beneficiaries.

19 Q. (By Mr. McEntire) Fair -- fair enough. The
20 claimant beneficiaries?

21 MR. STANCIL: Objection to form.

22 Q. (By Mr. McEntire) Is that correct?

23 A. Claimant trust beneficiaries, yes.

24 Q. Who was involved in setting the amount of the
25 indemnities? Is that you and the oversight board

1 together?

2 MR. MORRIS: Objection to the form of the
3 question. I'm going to direct the witness not to
4 answer. This has no relevance of any kind.

5 Q. (By Mr. McEntire) When was -- when -- when was
6 the indemnity amount set?

7 MR. STANCIL: Objection to form.

8 A. Initially, the -- the initial part is set --
9 was set at the effective date, or actually before then,
10 as part of the claimant trust agreement and the
11 indemnity trust agreement. And it has the ability to
12 get adjusted based upon the expected anticipated
13 indemnification obligation. So it depends on what they
14 are.

15 Q. (By Mr. McEntire) How did you go about
16 estimating the -- the potential indemnity obligations?

17 MR. MORRIS: Objection.

18 MR. STANCIL: Objection to form.

19 MR. MORRIS: Instruct the witness not to
20 answer. This is confidential legal advice, assessment
21 of indemnity obligations. I'm directing the witness not
22 to answer on grounds of attorney-client privilege.

23 Q. (By Mr. McEntire) So this was -- this was not
24 determined by the oversight board. This was on the
25 basis of advice from attorneys. Is that -- is that what

1 you're telling me, Mr. Seery?

2 MR. STANCIL: Objection to form.

3 MR. MORRIS: Objection to the form of the
4 question.

5 MR. MCENTIRE: You can answer.

6 MR. STANCIL: No, you cannot, Mr. Seery.

7 Q. (By Mr. McEntire) Mr. Seery --

8 MR. STANCIL: Excuse me one second,
9 Mr. McEntire. Excuse me. You've been told by company
10 counsel that that constitutes the company's privileged
11 information, how those determinations were reached.

12 MR. MCENTIRE: Can you direct -- can you go
13 to Page 13, Tim, please?

14 Q. (By Mr. McEntire) Class 8 -- at the bottom of
15 the page, Class 8, 9 summaries, do you see where I'm
16 reading?

17 A. No.

18 Q. No? It's Item No. 2.

19 MR. MORRIS: Can you scroll up a bit,
20 please?

21 MR. MCENTIRE: Scroll down. Yeah, scroll
22 up. Show him the --

23 MR. STANCIL: Bottom of the page.

24 MR. MCENTIRE: So we can see the bottom of
25 the page. Correct. There you go.

1 MR. STANCIL: There you go.

2 Q. (By Mr. McEntire) Class 8, Class 9 summary, can
3 you tell me what we're looking at here?

4 A. Not off the top of my head. I have to read it.

5 Q. I'm asking you to look at Item No. 2.

6 A. Yeah. Yeah. This is a breakdown of Class 8
7 and 9 alone as to what's been distributed on those
8 classes. Whereas up above, the U.S. trustee form has
9 aggregate number which includes Class 7, 8, and 9.

10 Q. If we look at Class 8, it says 28.7 million
11 remaining. Is that the amount that's -- that's still
12 remaining before you fully discharge and pay off
13 Class 8?

14 A. I don't think so. I believe that -- that
15 doesn't seem like the right amount. I think that
16 that -- let me see what the footnote says.

17 Q. Were you finished with your answer?

18 A. I'm just -- I'm looking at the footnote. I
19 don't think that's the correct amount. But the footnote
20 explains why.

21 Q. So I'm just trying to understand what the 28.7
22 represents.

23 MR. MORRIS: Objection to the form of the
24 question.

25 A. I believe that that does not include -- it's in

1 Footnote 3. But I think it's the face amount of the --
2 plus the face amount of the pending claims, less the
3 cumulative amount, and excluding interest on the claims.

4 Q. (By Mr. McEntire) So 28.7 million does not
5 include the accrued interest, so you're going to have to
6 add that in, right?

7 A. Yes.

8 MR. STANCIL: Objection to form.

9 Q. (By Mr. McEntire) All right. And do you know
10 what the accrued interest is?

11 A. I don't know.

12 Q. Is there a current plan in place to monetize
13 the remaining assets of Highland Capital?

14 MR. MORRIS: I'll let him answer yes or no.

15 A. Yes.

16 Q. (By Mr. McEntire) Is there a timetable within
17 which that monetization is -- is hoped to be achieved?

18 MR. MORRIS: I'll let him answer yes or no.

19 A. It depends on -- on the market and the activity
20 we have going on. So there's no specific timetable.
21 We're -- we're doing our best in the case of each of the
22 assets and the market they're in. So there's no --
23 there's no projected time period.

24 Q. (By Mr. McEntire) Are there active efforts to
25 monetize all of the remaining assets, as we sit here

1 today?

2 MR. MORRIS: I'll let him answer yes or no.

3 A. Yes.

4 Q. (By Mr. McEntire) Is there some goal that has
5 been established in terms of when you hope to fully
6 monetize and discharge your obligations as the trustee?

7 MR. STANCIL: Objection to form.

8 A. There's not a goal. The original goal was
9 12-31-22. So we don't have a specific goal.

10 Q. (By Mr. McEntire) So right now there is no
11 deadline at all set for monetization; is that correct?

12 MR. MORRIS: Objection to the form --

13 MR. STANCIL: Objection to form.

14 MR. MORRIS: -- of the question. That's a
15 different question.

16 A. Yeah. There's -- there's no -- there's no --
17 there's no deadline.

18 MR. MCENTIRE: Ms. Court Reporter, how much
19 time have I used, please?

20 THE COURT REPORTER: Christina, do you --

21 MR. MCENTIRE: I couldn't hear you.

22 THE COURT REPORTER: I was trying to talk.
23 But someone talked over me.

24 Christina, do you have the time?

25 THE VIDEOGRAPHER: I'd need to go off the

1 record and add it.

2 MR. STANCIL: Yeah.

3 THE COURT REPORTER: Yeah, me too.

4 MR. STANCIL: That's what I was going to
5 suggest, Sawnie, we take a quick break for about --

6 MR. MCENTIRE: Yeah. I need to run down
7 the hall anyway. But I would like to know the time
8 before we take the break. Let's go off the record now.

9 MR. STANCIL: Yeah. That's what I was
10 suggesting.

11 THE VIDEOGRAPHER: The time is 2:11 p.m.
12 We're going off the video record.

13 (Break taken from 2:11 p.m. to 2:25 p.m.)

14 THE VIDEOGRAPHER: The time is 2:25 p.m.
15 We're back on the video record.

16 MR. MCENTIRE: Ms. Court Reporter, or
17 somebody, Videographer, would you let me know when I've
18 got about five to ten minutes left, please.

19 Mr. Seery, we're kind of in the last --
20 we're past the seventh inning stretch. We're going --
21 in the last inning now. So we'll try to make this as
22 efficient as possible.

23 Q. (By Mr. McEntire) Was Farallon, to your
24 knowledge, ever a client of Sidley & Austin while you
25 were an attorney at Sidley & Austin?

1 A. No. I never -- I never represented them. And
2 I don't know that they were ever a client of Sidley
3 Austin ever.

4 Q. Same question about Stonehill. Was Stonehill
5 ever a client of Sidley & Austin while you were there?

6 A. No, not that I -- not that I ever heard.

7 Q. How about in connection with any other law firm
8 that you, in your past life, were connected with?

9 A. No, not that I've ever heard.

10 Q. Same question with regard to Farallon in
11 connection with any previous law firm you were with.

12 A. Yeah, assuming the first one was Stonehill,
13 never any law firm. The second one, Farallon, never any
14 law firm. I'd never represented them. I've never known
15 any firm that I ever worked for to, as a lawyer, to
16 represent them.

17 Q. Are you familiar with a self advisory agreement
18 between Highland and NexPoint?

19 A. Not -- not specifically.

20 Q. How about generally?

21 A. There -- there were agreements between Highland
22 and NexPoint that were terminated or rejected as part of
23 the exit from bankruptcy, yes.

24 Q. You weren't aware, though, a self advisory
25 agreement stayed in effect through February of 2021?

1 MR. STANCIL: Object to form.

2 A. Yeah, I don't -- I don't believe that to be the
3 case.

4 Q. (By Mr. McEntire) What was the nature of the
5 self advisory agreement? What did it entail?

6 MR. STANCIL: Objection to form.

7 A. Yeah. I don't -- I don't recall the specifics
8 of -- of that arrangement.

9 Q. (By Mr. McEntire) Do you believe -- do you
10 recall that a compliance log was maintained by both
11 companies as part of that self advisory agreement?

12 MR. STANCIL: Objection to form.

13 A. No. I have no -- I have no knowledge of that.

14 Q. (By Mr. McEntire) I'd like to talk a little bit
15 about the meet and greet that we started off this
16 deposition about or discussing.

17 The meet and greet with Farallon took place
18 at their offices in San Francisco, correct?

19 A. Yes.

20 Q. Your office is in New York, correct?

21 MR. MORRIS: Objection to the form of the
22 question.

23 A. Yes.

24 Q. (By Mr. McEntire) Did you fly out there to San
25 Francisco to meet with Mr. Patel and Mr. Linn?

1 MR. STANCIL: Objection to form.

2 A. No. So -- so Guggenheim had a team. And we
3 went out and met with people in both the Bay Area and
4 with folks in -- in L.A.

5 Q. (By Mr. McEntire) I thought this was after you
6 had left Guggenheim that you went out for this meet and
7 greet?

8 A. There were two.

9 Q. There were two meets and greets?

10 A. Yeah. There was -- there was one at
11 Guggenheim, which involved Mr. Patel. I don't believe
12 Mr. Linn was there. And that was in 2017 or '18. I
13 don't recall. Because you asked me when I met
14 Mr. Patel. And then -- then there was the one after I
15 left Guggenheim.

16 Q. Okay. Let's -- let's talk about each of them.
17 Let me write that down so I don't forget.

18 The -- the 20 -- the 2019, you went out
19 there by yourself, correct?

20 A. I went there with my wife.

21 Q. Okay. Fair enough.

22 A. She had her own business. She wasn't involved
23 in any of my business.

24 Q. Fair enough.

25 So you and your wife go to San Francisco, a

1 meet and greet with Farallon, and then presumably you're
2 a tourist for a couple of days?

3 A. That's not correct, no.

4 Q. Okay. I was just trying.

5 All right. So you fly out to meet
6 Farallon. And you -- you pay for your own ticket,
7 correct, and your wife's ticket?

8 A. Your -- your premise is incorrect. I did not
9 fly out to meet Farallon.

10 Q. How did you meet them?

11 A. I -- I flew out with her when she was going on
12 a trip. And I paid for my own ticket to go out. And
13 then I saw a number of people in the Bay Area. And then
14 I went down to L.A. And I saw a number of people in
15 L.A.

16 Q. Okay. Where was Farallon based? In Los
17 Angeles?

18 A. No. Farallon is based in San Francisco.

19 Q. Oh, okay. So you flew out there. You paid for
20 your own -- own transportation. And you met with
21 Mr. Linn in San Francisco?

22 A. I believe that --

23 MR. STANCIL: Object to the form.

24 A. Yeah. No, I don't think that's correct. I
25 believe I met with Mr. Linn and Mr. Patel. And that

1 was, I believe, the first time I ever met Mr. Linn.

2 Q. (By Mr. McEntire) Fair enough.

3 And how long did the meeting last?

4 A. Maybe 20 minutes, a half hour.

5 Q. Okay. Were other people at the meeting other
6 than you, Mr. Linn, and Mr. Patel?

7 A. I -- I don't recall. If there was, it would
8 have been a junior person.

9 Q. But there was not a bunch of people there. It
10 was just -- it was a small group there focusing on your
11 desire to introduce yourself, correct?

12 MR. STANCIL: Objection to form.

13 A. I -- I -- I knew of -- of Mr. Patel. And I had
14 met him the year before or year and a half before,
15 whenever that was with Guggenheim. And I had moved on
16 from Guggenheim and was touching base with people that I
17 knew in the industry. And because I was going to be in
18 San Francisco, I lined up a bunch of meetings in San
19 Francisco with various people. And then I did the same
20 thing in L.A.

21 Q. (By Mr. McEntire) When in -- when in 2020 --
22 when in 2019 did this actually happen?

23 A. I don't recall. It was in the fourth quarter
24 sometime.

25 Q. In the fourth quarter. So October, November,

1 or December, right?

2 A. Somewhere in that range, yeah.

3 Q. And you became involved in the Highland
4 bankruptcy when?

5 A. January 7th, 2020. 7th or the 9th. I don't
6 recall.

7 Q. So it was just a matter of a few months you --
8 you got involved and were elected to the board of
9 directors, correct?

10 A. I was selected to the board by the debtor,
11 which was Highland controlled by Dondero, and the
12 committee.

13 Q. Okay. What type of business were you actually
14 trying to generate with Farallon at this meet and greet
15 in 2019?

16 MR. STANCIL: Object to the form.

17 A. I wasn't trying to --

18 MR. SCHULTE: Objection, form.

19 A. I wasn't trying to generate any business. I
20 was meeting people in the industry to get a better sense
21 for myself as to what different investors were thinking
22 and how I might do the next thing for myself.

23 Q. (By Mr. McEntire) Okay. The 2017 meet and
24 greet, was that also in San Francisco?

25 A. That was, yes.

1 Q. And you went out there with a group from
2 Guggenheim?

3 A. Yes.

4 Q. And you met Mr. Linn?

5 A. No.

6 Q. Who did you meet with?

7 A. Mr. Patel.

8 Q. I'm sorry. I'm sorry. I get them confused.
9 Mr. Patel.

10 And how many people went with you from
11 Guggenheim?

12 A. I don't recall. At least -- at least three in
13 addition to me. It may have been four.

14 Q. Okay. And how long was that meeting?

15 A. Probably the same, half hour. That would be --
16 that would be longer because there were more people
17 there to talk about what -- what they were thinking
18 about their specific area. So that would probably be
19 somewhere in the 30 minutes to 45 or 60 minutes.

20 Q. Was there a presentation made?

21 A. Not a -- not a specific presentation. There
22 was no particular pitch.

23 Q. So you flew four people out for a 30- to
24 40-minute meeting; is that what you said?

25 MR. MORRIS: Objection to the form of the

1 question.

2 A. You keep making stuff up. It's sort of a
3 problem. I said that it was part of a meet and greet
4 that involved several businesses in the Bay Area and
5 then down to Los Angeles. Why do you make stuff up?

6 Q. (By Mr. McEntire) I'm sorry. I wasn't
7 attempting to do that. I apologize if you believe that
8 way.

9 So -- but I want to make sure --

10 A. Because you didn't.

11 Q. Mr. Seery, are you finished now?

12 A. I am.

13 Q. Okay. Other than your company and the
14 representatives from Guggenheim, was anyone else in
15 attendance at this meeting from outside of Farallon?

16 MR. STANCIL: Object to the form.

17 MR. SCHULTE: Objection, form.

18 A. I don't -- I don't recall.

19 Q. (By Mr. McEntire) All right. Did any business
20 result from that meet and greet?

21 A. Not that I'm aware of, no.

22 Q. And that was in 2017. You were with Guggenheim
23 for another two years?

24 A. I don't recall whether it was '17 or '18.

25 Q. Okay. And between the two meet and greets, did

1 you have any other communications with Mr. Patel or
2 Mr. Linn?

3 A. Not that I know of, no.

4 Q. When you went out to San Francisco in 2019 with
5 your wife, how many other companies in San Francisco did
6 you meet with?

7 A. At least three or four.

8 Q. Do you recall who they were?

9 A. Different hedge funds. Also some of the CLO
10 funds, mutual funds. I don't recall who else I saw
11 then. And then I had others in Los Angeles as well.

12 Q. How would you describe Farallon? Is that a
13 hedge fund?

14 A. I think it's fair to say they're -- they're a
15 hedge fund. I think they're multi-strategy fund. I
16 think it's probably a fair description.

17 Q. What's the distinction?

18 A. Between what and what?

19 Q. A multi-strategy fund and a hedge fund.

20 A. I think people think about hedge funds as in --
21 often in a generic term. And then multi-strategy
22 provides more specificity to what they do.

23 Q. And how would you describe Farallon?

24 A. I said I think they're -- I don't know how they
25 describe themselves. I would describe them as a

1 multi-strategy hedge fund.

2 Q. Okay. Do they have their own investors?

3 A. I have no idea how they're structured or what
4 their investments are or who they're --

5 Q. I'm not asking what -- I'm not asking what your
6 investments are. I'm asking --

7 A. I said who their investors are.

8 Q. I'm not asking for -- sorry. Go ahead. I'm
9 not asking -- I'm not asking for indemnities. I'm just
10 asking do they generically have their own investors?

11 A. And I said I have no idea how they're
12 structured or who their investors are, whether they have
13 one investor, whether they have ten investors, whether
14 they have a million investors. I don't know. I don't
15 know anything about their business, other than generally
16 they're a multi-strategy fund.

17 Q. So as -- as a result of two meet and greets,
18 one on behalf of Guggenheim and one on behalf of
19 yourself, you don't know anything about how Farallon is
20 structured?

21 A. No.

22 MR. MCENTIRE: Okay.

23 MR. SCHULTE: Objection, form.

24 Q. (By Mr. McEntire) Now, Stonehill, you've never
25 done a meet and greet with Stonehill, correct?

1 A. No.

2 Q. All right. Are you familiar with a company
3 known as Grosvenor?

4 A. I never heard of -- I believe it's pronounced
5 Grosvenor.

6 Q. Maybe. I apologize.

7 A. And I never heard of Grosvenor until this
8 Highland case.

9 Q. Gro- -- how do you pronounce it? I don't want
10 to mispronounce it.

11 A. I don't -- I pronounce it Grosvenor. That's
12 how they do it in London.

13 Q. Fair enough.

14 A. You're talking about a square, not a hedge
15 fund, or whatever they are.

16 Q. I know. I've been to the square. The U.S.
17 Embassy used to be located there.

18 A. That's correct.

19 Q. So Grosvenor, you've never had any dealings
20 directly with Grosvenor?

21 A. No. Never heard of them.

22 Q. Sidley & Austin, were you aware Grosvenor had
23 an interest in the -- in -- in the Redeemer Crusader
24 fund with the Redeemer Committee? Were you aware of
25 that?

1 MR. STANCIL: Objection to form.

2 A. Before I became in Highland, I'd never --
3 involved in Highland --

4 Q. After -- after --

5 A. -- I never heard of them.

6 Q. Fair enough.

7 After you became involved at Highland, had
8 you -- what was your understanding of Grosvenor?

9 A. My -- my understanding of Grosvenor, much of
10 which came from Dondero, was that they had an investment
11 in a Crusader, and that the Redeemer Committee, which
12 was the -- the folks who redeemed from Crusader, was
13 populated, to some degree, by Grosvenor or former
14 Grosvenor employees.

15 Q. Do you know that Grosvenor is a significant
16 investor in Farallon and Stonehill?

17 MR. STANCIL: Object to the form.

18 A. I have no knowledge --

19 MR. SCHULTE: Objection, form.

20 A. I have no knowledge of Grosvenor. I have no
21 knowledge of who Grosvenor is invested in. I have no
22 knowledge of Farallon's investors, nor do I have any
23 knowledge of Stonehill's investors.

24 Q. (By Mr. McEntire) Do you know John Motulsky?

25 A. I've met John Motulsky, yes.

1 Q. And what was the context of that meeting? Was
2 that social or professional?

3 A. First social at -- at industry functions. And
4 I have seen him since meeting on the oversight board at
5 Stonehill's offices.

6 Q. Is he an attorney?

7 A. I don't know John's background.

8 Q. You say you've seen him socially at various
9 industry meetings. What type of industry meetings are
10 those that you're referring to?

11 A. The distressed community in New York has a few
12 functions every year around the holiday time. And I
13 have seen Motulsky at those functions.

14 Q. Okay.

15 A. And I can't tell you the last one. It's been,
16 you know, 20-plus years of doing this in those -- going
17 to those kinds of things.

18 Q. John Motulsky, do you know what -- what his
19 affiliation is with Stonehill?

20 MR. STANCIL: Object to the form.

21 A. I believe he's the founder.

22 Q. (By Mr. McEntire) So how many times a year do
23 you actually see John Motulsky?

24 MR. MORRIS: Objection to the form of the
25 question.

1 A. If I've seen John Motulsky five times in the
2 past 25 years, that'd probably be too many. That's -- I
3 don't think it's been more than that.

4 Q. (By Mr. McEntire) When is the last time you saw
5 John Motulsky?

6 A. Probably in -- sometime in the second half of
7 2022 when I did a board meeting from Stonehill's
8 offices.

9 Q. You were at Stonehill's offices conducting a
10 board meeting?

11 A. A -- yeah, an oversight board meeting.

12 Q. And John Motulsky was still there?

13 A. He stopped in and said hello and then left.

14 Q. Okay. What is his current position at
15 Stonehill?

16 MR. MORRIS: Objection to the form of the
17 question.

18 A. I have no idea.

19 Q. (By Mr. McEntire) And prior to 2022 when you
20 conducted the board meeting, when was the one time
21 before that that you had met with or -- met with John
22 Motulsky?

23 A. I said it was at industry functions. I don't
24 recall any -- any other meetings with John Motulsky.
25 I've never been inside John Motulsky's home office.

1 I've been in Stonehill's conference room. I've nev- --
2 I don't know John Motulsky other than in those ways.

3 Q. Well, let me ask this question, Mr. Seery.
4 Initially you said that you initially had some social
5 contact with Mr. Motulsky. Then you said professional
6 contact with Mr. Motulsky. What was the professional
7 contact?

8 MR. STANCIL: Object to the form of the
9 question. Mr. Seery testified exactly -- I'm sorry,
10 Sawnie. But he said he saw him socially at industry
11 events.

12 MR. MCENTIRE: You don't need -- you don't
13 need to woodshed the witness on the record. My
14 understanding --

15 MR. STANCIL: No. Sawnie, you don't
16 need -- you don't need to mischaracterize his testimony.

17 MR. MCENTIRE: I'm not.

18 MR. STANCIL: Five times. You are.

19 Q. (By Mr. McEntire) You indicated both social and
20 professional. What was the professional?

21 (Simultaneous speaking.)

22 MR. STANCIL: Wait. Wait, Jim.

23 I object to the form of this question.

24 You may go ahead and answer again.

25 A. My recollection is that I've seen John at

1 the -- Motulsky at the professional events. And that --
2 and I think I testified there was no -- I never sat in
3 his office. He's never been in my office at any place
4 that I've ever worked.

5 Q. (By Mr. McEntire) All right. Going back to
6 your meet and greet with Patel and Linn in San
7 Francisco, you said you were meeting with them to see
8 what they were thinking so you could better inform
9 yourself on what your next step might be; is that fair?

10 MR. STANCIL: Object to the form of the
11 question.

12 A. I think, generally, yes. I was trying to
13 survey the landscape of what investors were thinking
14 about the -- the environment and what the distressed
15 environment, in particular, could look like and whether
16 I'd have an opportunity to find a place at different
17 investment funds that could be interesting for me.

18 Q. (By Mr. McEntire) And did they disclose their
19 involvement at all as investors in distressed assets?

20 A. No. I already knew that Farallon invested in
21 distressed assets at times. That's part of their -- it
22 was my understanding was their multi-strategy profile.

23 Q. Did you also understand that that would include
24 involvement in purchasing claims in bankruptcy
25 proceedings?

1 A. I didn't have an understanding either way.
2 I've never known or heard of them purchasing claims.
3 They may well have done it.

4 Q. As you -- sitting here today, are you aware
5 that -- that Farallon does engage in this -- this type
6 of investing in claims?

7 A. Sitting here today --

8 MR. SCHULTE: Objection, form.

9 A. Sit -- sitting here today, I know that they
10 bought claims in this case prior to the -- that e-mail
11 that I got on March 15th, 2021. I had no knowledge of
12 other claims that they bought because I haven't been
13 around --

14 Q. (By Mr. McEntire) So if -- if Mr. Patel has
15 stated -- let me rephrase this.

16 If Mr. Patel has stated that he's been
17 involved in purchasing claims prior to the Highland
18 Capital bankruptcy based upon your guidance and advice
19 and made a lot of money, do you deny that that ever
20 happened?

21 MR. STANCIL: Objection to form.

22 MR. MORRIS: Objection to the form of the
23 question.

24 Q. (By Mr. McEntire) Do you deny -- do you deny
25 that statement?

1 MR. STANCIL: Object to the form.

2 MR. SCHULTE: Objection, form.

3 A. I've never been involved in purchasing claims
4 with Mr. Patel.

5 Q. (By Mr. McEntire) I'm not suggesting that you
6 were actually purchasing yourself. If Mr. Patel stated
7 that Farallon had made money based upon your prior
8 guidance in connection with other claims in other
9 bankruptcies, do you deny that that ever happened?

10 MR. STANCIL: Objection to form.

11 MR. SCHULTE: Objection, form.

12 A. I never was involved or advised -- advised them
13 about purchasing claims. That's just not something I
14 would have done.

15 Q. (By Mr. McEntire) Same question with regard to
16 Stonehill.

17 MR. SCHULTE: Same objection.

18 Q. (By Mr. McEntire) Same answer?

19 MR. STANCIL: Same objection.

20 Q. (By Mr. McEntire) Same answer?

21 A. I've never been involved in purchasing claims
22 in a bankruptcy with Stonehill.

23 Q. (By Mr. McEntire) Were you involved in the
24 Toys"R"Us bankruptcy?

25 A. No, I was not.

1 Q. Were you involved in the Blockbuster
2 bankruptcy?

3 A. Yes.

4 MR. MORRIS: Objection, asked and answered.

5 Q. (By Mr. McEntire) What specifically was your
6 involvement?

7 A. In the Blockbuster bankruptcy?

8 Q. Yes, sir.

9 A. Yeah, I represented a lender group.

10 Q. Which lender?

11 MR. MORRIS: Objection to the form of the
12 question.

13 A. They were secu- -- I believe they were secured
14 bonds.

15 Q. (By Mr. McEntire) They were -- had secured
16 bonds. What was the name of the company?

17 MR. STANCIL: Object to the form.

18 Q. (By Mr. McEntire) Sorry?

19 A. Blockbuster.

20 Q. Oh, you were -- that was actually -- you --
21 were you actually representing Blockbuster, or you
22 represented someone who was involved in the bankruptcy
23 proceedings?

24 MR. MORRIS: Objection, asked and answered.

25 A. I represented the secured lender group.

1 Q. (By Mr. McEntire) Okay. As an attorney?

2 A. Yes.

3 Q. That's when you were with Sidley & Austin?

4 A. Yes.

5 Q. I'm doing kind of a little bit of cleanup here
6 because we're kind of wrapping up the -- the big
7 witching hour.

8 In connection with the negotiations of the
9 compensation agreement, we established the timing. We
10 established who you were dealing with.

11 Did anyone hire or retain a third-party
12 independent consultant to come in and assess the
13 reasonableness of your compensation scheme?

14 MR. STANCIL: Object to the form.

15 A. In connection with that negotiation, Highland
16 did not. And I'm not -- I would know that. And I'm not
17 aware that any of the board members did either.

18 Q. (By Mr. McEntire) As the chief restructuring
19 officer and the CEO of Highland, when COVID hit and
20 values -- asset values were dropping as we discussed
21 earlier, were you involved in the direct communications
22 with any of the boards of any of the portfolio companies
23 to explain what was happening?

24 MR. STANCIL: Object to the form.

25 MR. MORRIS: You can answer yes or no.

1 Subject to the objection. But don't --

2 A. It depends on when. And I don't think I needed
3 to explain COVID to anybody.

4 Q. (By Mr. McEntire) I only said -- used that as a
5 reference point. I'm not asking you to explain COVID,
6 Mr. Seery. My -- my intent was different.

7 We've seen documents here reflecting a
8 significant decline in value from the petition date to
9 December 31st, 2020. And I'm asking you whether you
10 recall having communications with the boards or the
11 management of any of the portfolio companies concerning
12 the causes of that decline.

13 MR. STANCIL: Object to the form.

14 MR. MORRIS: Answer yes or no.

15 A. Yes.

16 Q. (By Mr. McEntire) Would that have been in the
17 form of -- of written documents?

18 MR. MORRIS: I direct him not to answer.

19 MR. MCENTIRE: What's your object- --
20 what's the objection there?

21 MR. MORRIS: It has nothing to do with the
22 quid pro quo and the colorability of the claims here.
23 It's fishing to get information to use for future
24 litigation.

25 MR. MCENTIRE: I see.

1 MR. MORRIS: It's both irrelevant. And I'm
2 doing it as a protective matter.

3 Q. (By Mr. McEntire) So, Mr. Seery --

4 MR. MORRIS: If you help me to understand
5 why it's relevant, I might reconsider. But otherwise,
6 I'm going to stand by my instructions.

7 Q. (By Mr. McEntire) When you made the data room
8 available for people or entities who signed the NDA for
9 exit financing, what was included in the data room at
10 that time?

11 MR. STANCIL: Objection to form.

12 A. I only know generally. I didn't look
13 specifically at the data room. But it would have been
14 the plan, the -- who was going to be in each role, so
15 the personnel, the -- the structure between the HCMLP
16 and the trust, and then the -- the assets below and what
17 the financings were that were in place at various
18 entities.

19 Q. (By Mr. McEntire) Would there be asset
20 valuations made available to the potential bidders for
21 exit financing?

22 MR. STANCIL: Object to the form.

23 A. I don't think so. We would have had whatever
24 our valuations were at the time. I don't know that we
25 made those available to entities. They would have made

1 their own -- anybody doing due diligence would have done
2 their own work. I don't know what was in -- exactly in
3 the data room.

4 Q. (By Mr. McEntire) You stated that you don't
5 know when Stonehill closed its agreements to acquire the
6 claims?

7 A. Yeah. I don't -- I don't know specifically.

8 Q. So you -- so you don't -- you don't know
9 whether it was before or after the NDA that Stonehill
10 signed; is that correct?

11 A. I -- I don't know. I tend to think it was
12 after. But I don't -- I don't know.

13 Q. Okay. Do you know for a fact that Stonehill
14 actually accessed the data room virtually?

15 A. I -- I -- I don't know for a fact. I -- I
16 assume they did because they put forth a very detailed
17 proposal to provide exit financing. And it was
18 extremely competitive.

19 Q. Why did you select the -- why did you not
20 select Stonehill?

21 A. It wasn't the best one.

22 Q. Who -- who -- I don't know the answer to this
23 question. Perhaps I should. Who actually did provide
24 the exit financing?

25 A. Blue Torch Capital.

1 Q. In connection with MGM, did you -- did you ever
2 contact the MGM in connection with the potential sale to
3 Amazon or Apple?

4 MR. STANCIL: Object to the form.

5 A. At some point, MGM contacted me.

6 Q. (By Mr. McEntire) You never contacted the
7 general counsel of MGM to ask him questions about the
8 sale to Amazon or Apple?

9 MR. STANCIL: Object to the form.

10 A. They reached out to me. And we actually signed
11 a -- an NDA with MGM at some point.

12 Q. (By Mr. McEntire) When did you sign an NDA with
13 MGM?

14 A. It would have been the beginning of May. I
15 think it was the beginning of May 2021, that -- that
16 range. It was a very tight period of time. And -- and
17 the buyer wanted us to sign off on the -- on the
18 agreement.

19 Q. What buyer?

20 A. Amazon.

21 Q. Amazon. Amazon reached out to you through MGM
22 and wanted you to sign an NDA; is that correct?

23 A. No.

24 MR. STANCIL: Objection to the form.

25 MR. MORRIS: Objection to form.

1 A. That's not correct.

2 Q. (By Mr. McEntire) Then correct -- then correct
3 the record for me.

4 A. I think I said it correctly before. MGM
5 reached out.

6 Q. Yes.

7 A. And wanted to have us take a look at the
8 transaction and make sure that we were supported.

9 Q. How much MGM stock did Highland actually own?

10 A. Highland owned about 150 thou- -- 170,000
11 shares, I think.

12 Q. You testified to that earlier. But I guess I
13 was looking for a little bit -- a different variation of
14 that. What percentage of MGM stock did you own?

15 MR. MORRIS: Objection to the form of the
16 question.

17 A. Highland owned a teeny percentage.

18 Q. (By Mr. McEntire) Okay. So MGM reached out to
19 you and asked you to sign an NDA to make sure that you
20 were good with the deal?

21 A. Yeah. I think it was Highland, not reaching
22 out to me. And they reached out to, I think, all of the
23 significant shareholders. It was extremely tightly
24 held. And a number of them had to sign off if they
25 thought the transaction was correct. That's my

1 understanding.

2 Q. Did they explain to you why it was so tightly
3 held if, according to you, it was already publicly
4 known?

5 MR. MORRIS: Objection to the form of the
6 question. That's not what --

7 A. The shares were tightly held.

8 Q. (By Mr. McEntire) I see.

9 A. The shares -- the shares of MGM were held
10 basically by six hedge funds.

11 Q. Okay. Fair enough.

12 Did MGM tell you why they thought they
13 needed an NDA from you if, in fact, it was publicly
14 well-known that Amazon or Apple was going to buy them?

15 A. That's -- that's not what they were asking me.
16 They were coming and telling us, "We have a transaction.
17 Here's what it -- here's what is going to be paid.
18 Here's the structure of the transaction. Here's the
19 merger agreement. We want your support on this
20 transaction. It's happening in about a week or ten
21 days." It was very tight.

22 Q. And you -- you considered the fact that they
23 were telling you that a transaction would occur was
24 material nonpublic information, correct?

25 MR. MORRIS: Objection.

1 MR. STANCIL: Object to the form.

2 A. No, I don't. I think it's -- when the -- they
3 call you and ask you to sign a NDA. They didn't tell me
4 anything until after you sign that NDA. They -- they
5 just said, "We need you to." I knew they were for sale,
6 of course. I knew who the likely buyers was. I had no
7 idea what the price was. I had no idea what the timing
8 was. This was after the first quarter of 2021. And
9 they actually needed -- told us we -- they need our
10 support.

11 Q. (By Mr. McEntire) So you agree that the timing
12 of the deal could actually be material nonpublic
13 information?

14 MR. STANCIL: Object to the form.

15 MR. MORRIS: Form of the question.

16 A. I don't -- I don't -- I don't think what you're
17 fishing for you're going to find in these lawyers.

18 Q. (By Mr. McEntire) I'm not fishing for anything.
19 I'm just asking you will you agree that one of the
20 issues was the timing of the sale, and they wanted you
21 to sign an NDA? That was one of the reasons?

22 MR. MORRIS: Objection --

23 MR. STANCIL: Object to the form.

24 MR. MORRIS: -- to the form of the
25 question.

1 A. And that's not what I said. And that was not
2 an issue.

3 Q. (By Mr. McEntire) Okay. So you don't
4 consider -- do you consider anything that MGM told you
5 to be material nonpublic information?

6 MR. STANCIL: Object to the form.

7 A. Yeah. I -- I -- I think they did. I think
8 they told us they had an agreement to sell it. They
9 told us how much it was going to be. They told us how
10 the buyer -- who the buyer was. They told us exactly
11 how it was going to be structured. That's -- that's
12 material nonpublic information.

13 Q. (By Mr. McEntire) Did you -- did you do some
14 due diligence in connection with your evaluation,
15 whether you were going to support it?

16 A. We analyzed the agreement. And we considered
17 the price, obviously. We'd already -- the market price
18 was pretty fair. And we had a good view of what that
19 was. And this was a good transaction.

20 THE VIDEOGRAPHER: Mr. McEntire, you're at
21 3 hours and 53 minutes.

22 MR. MCENTIRE: All right. One second.

23 (Sotto voce discussion off the record.)

24 MR. MCENTIRE: One second, please.

25 Q. (By Mr. McEntire) Mr. Seery, you retained or

1 rehired several of the Highland Capital employees after
2 you became the CEO. You retained some of them, correct?

3 A. Yes. Well, Highland retained them.

4 Q. Correct. That's -- that was what I meant.

5 Did you ever consider hiring Mark Patrick
6 to stay at Highland?

7 A. No.

8 Q. That was never a consideration?

9 A. Not -- no.

10 MR. MCENTIRE: Can we go off the record for
11 about one minute? I may be wrapping up. I just want to
12 check a couple things.

13 THE VIDEOGRAPHER: The time is 2:59.

14 MR. MCENTIRE: But my recommendation, just
15 please stay in the room, if you would.

16 THE VIDEOGRAPHER: The time is 2:59 p.m.
17 We're going off the video record.

18 (Break taken from 2:59 p.m. to 3:01 p.m.)

19 THE VIDEOGRAPHER: The time is 3:01 p.m.
20 We're back on the video record.

21 Q. (By Mr. McEntire) Mr. Seery, after you had your
22 conversation and -- with MGM, you said in the first part
23 of May?

24 A. Yes. First or second week of May. It was
25 somewhere in that -- in that range because they

1 announced on May 26th.

2 Q. Okay. So I want to make sure the record is
3 clear. At no time before then did you contact any
4 executive or the general counsel of MGM on your own; is
5 that correct? Is that what your testimony is?

6 MR. STANCIL: Object to the form.

7 A. I don't think that's exact -- I don't think I
8 said that. I don't think that's exactly correct. And
9 I -- I don't know if, for example, Highland contacted
10 MGM. And I think we did in connection with Dondero's
11 surreptitious sale of 125 million of MGM out of RCP in
12 late '19, 2019. I don't -- I don't recall any other
13 contact prior to that time. I just -- I can't --

14 Q. (By Mr. McEntire) What -- what's the name of
15 the person or individuals you talked with in the first
16 part of May of 2021 when they asked you to sign the NDA?

17 A. I don't recall. The -- the GC is a woman,
18 Leslie. And I just -- I don't recall her -- her last
19 name off of the top --

20 Q. Any -- anyone else on the phone other than
21 Leslie, the general counsel?

22 A. There definitely would have been. And I forget
23 if he's the COO or the CFO, involved in -- in some of
24 those conversations.

25 Q. After you received the -- the e-mail from

1 Mr. Dondero in December 2020 that we've marked as an
2 exhibit here today about MGM, did you instruct anyone
3 else from Highland Capital to contact MGM about the
4 status of their -- the sale to either Amazon or Apple?

5 MR. MORRIS: I'm going to direct you --

6 MR. STANCIL: Object to the form.

7 MR. MORRIS: -- not to answer. I'm going
8 to direct you not to answer.

9 I think you're frozen, Sawnie. Oh, no.
10 There --

11 Q. (By Mr. McEntire) Mr. Seery, did you hear my
12 question?

13 A. (No audible response.)

14 Q. Hello?

15 A. Yes, I heard your question.

16 MR. MORRIS: And I directed him not to
17 answer.

18 MR. MCENTIRE: On what basis?

19 MR. MORRIS: Same basis. This has
20 absolutely nothing to do with the colorability of your
21 claims. And I know that you're fishing in order to try
22 to drum up a new cause of action. So I'm going to
23 instruct --

24 MR. MCENTIRE: Just to be clear, you've
25 instructed -- you've instructed Mr. Seery to not answer

1 a question about a communication from Highland Capital
2 to MGM between December 20th and when he received the
3 request to sign the NDA? Is that you're -- is that what
4 you're -- you're not --

5 MR. MORRIS: Yes.

6 MR. MCENTIRE: -- allowing me to question
7 him on this?

8 MR. MORRIS: I'll answer you again. And
9 I'll -- I'll give you the opportunity. And I won't hold
10 to the four-hour rule if you need another minute or
11 three. I'll ask you again to educate me on how, whether
12 he did or did not do that, that has anything to do with
13 his communications with Farallon and Stonehill and the
14 claims that are at issue in the proposed lawsuit.

15 MR. MCENTIRE: Well, if you've read our
16 motion and you read our complaint, you'll understand the
17 relevance. He's indicated that he did not have any
18 directed communications with MGM that he recalled. I'm
19 now asking him whether he delegated that or asked
20 someone else at Highland to have that communication with
21 MGM.

22 MR. MORRIS: And how does that -- how does
23 that relate to Farallon and Stonehill? If it doesn't,
24 then I'm going to direct him not to answer. If it does,
25 I'll be happy to let him answer.

1 MR. MCENTIRE: I think you know how it's
2 related because we have a specific affidavit that -- or
3 you know about an affidavit. And you also know about an
4 e-mail communication. And you know what Mr. Dondero
5 recalls.

6 MR. MORRIS: That's right. So ask him --
7 ask Mr. Seery anything you want about his communications
8 with Mr. Dondero, with his communications with Farallon,
9 with his communications with Stonehill. That's what
10 that declaration is about.

11 MR. MCENTIRE: Yeah.

12 MR. MORRIS: And I'll be happy to let him
13 answer any of those things.

14 MR. MCENTIRE: Okay. Well, I think I've
15 established the relevance.

16 Q. (By Mr. McEntire) So after you signed the NDA
17 with MGM, did you tell someone to put the MG stock --
18 MGM stock on a restricted list?

19 MR. MORRIS: Directing him not to answer.

20 MR. MCENTIRE: Okay. I want to shift gears
21 then a little bit, Mr. Seery. And I've got a few
22 minutes left.

23 Ms. Court Reporter, tell me when I've got
24 about one or two minutes. I may already be there.

25 Q. (By Mr. McEntire) Mr. Seery, I understand that

1 your -- your cell phone automatically deleted text
2 messages.

3 MR. STANCIL: Objection. We're not doing
4 this, Mr. McEntire. I've already told you I instruct
5 him not to answer document preservation fishing
6 expeditions because --

7 (Simultaneous speaking.)

8 MR. STANCIL: Excuse me -- another matter.

9 MR. MCENTIRE: My question is a little bit
10 different.

11 Q. (By Mr. McEntire) You identified that you have
12 a text message from your dealings with Farallon --
13 excuse me -- from Stonehill. And I'd like to know how
14 you have that text message if you have automatic delete
15 on your telephone.

16 MR. STANCIL: Objection.

17 Do not answer, Mr. Seery.

18 Sawnie, this is ridiculous. You can either
19 ask these questions, and we'll -- and we'll waste your
20 time continuing to instruct him not to answer. But the
21 answer is no. We're not going to let you use this for
22 discovery of some motion that Dubavoy filed two days
23 ago.

24 Q. (By Mr. McEntire) Mr. Seery, have you saved all
25 of your text messages reflecting your potential dealings

1 with Farallon and Stonehill pre-effective date?

2 MR. STANCIL: Same objection.

3 Do not answer, Mr. Seery.

4 MR. MCENTIRE: All right. I think I'll
5 reserve the rest of my questions until we meet on
6 June 8th.

7 Thank you for your time, Mr. Seery. I hope
8 you have a good weekend.

9 That's all the questions I have at this
10 time.

11 MR. MORRIS: Thank you, Sawnie.

12 MR. STANCIL: Thank you.

13 MR. MORRIS: Take care.

14 THE VIDEOGRAPHER: The time is 3:08 p.m.
15 We're going off the video record.

16 (End of proceedings.)

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:)
) CHAPTER 11
HIGHLAND CAPITAL)
MANAGEMENT, L.P.)
) CASE NO. 19-34054-SGJ11
Debtor.)

REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF JAMES P. SEERY, JR.
JUNE 2, 2023
(Reported Remotely)

I, Crystal Greer, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, JAMES P. SEERY, JR., was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

I further certify that pursuant to FRCP Rule
30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a party
before the completion of the deposition and returned
within 30 days from date of receipt of the transcript.
If returned, the attached Changes and Signature page
contains any changes and the reasons therefor;

 X was not requested by the deponent or a party

1 before the completion of the deposition.

2 I further certify that I am neither counsel for,
3 related to, nor employed by any of the parties or
4 attorneys in the action in which this proceeding was
5 taken, and further that I am not financially or
6 otherwise interested in the outcome of the action.

7 Subscribed and sworn to on this the 4th day of
8 June, 2023.

9
10 *Crystal Greer*

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